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**received**  
4-7-03  
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April 7, 2003

**HAND DELIVERED**  
**ADOT AUDITORIUM, APRIL 7, 2003**

Arizona Navigable Stream  
Adjudication Commission  
1700 West Washington, Room 404  
Phoenix, AZ 85007

Re: **Lower Salt River Hearing April 7, 2003**  
Our File No. 46149.012

Dear Commission Members:

This letter is written on behalf of the Home Builders Association of Central Arizona ("Home Builders") to support a finding of non-navigability of the Lower Salt River.

Home Builders is a non-profit corporation organized under the laws of the State of Arizona in 1951 to provide a vehicle for businesses in the housing and real estate industries in central Arizona to address issues and concerns relating to those industries. Home Builders currently has over 900 members including home builders, suppliers and subcontractors, banks, power and communications utilities, title and mortgage insurance companies, real estate developers and other businesses in central Arizona involved in and dependent upon the home building industry.

As such, Home Builders has an interest in the outcome of the navigability determination for the Lower Salt River currently under consideration by your Commission. A determination of navigability at statehood will result in claims of divesture of private title to large quantities of land in the floodplain of the Lower Salt and extensive litigation concerning those claims. This will disrupt industry and civic functions in the Phoenix metropolitan area, and undoubtedly end up harming the state's economy by casting doubt not only on land title, but also by raising new issues concerning the validity of our state water laws. Disruption of the economy adversely affects the Home Builders' industry, an industry that is, at the present time, one of the most healthy and vital industries in the State.

Maricopa County, Lower Salt River  
03-005-NAV  
4/7/03  
Evidence Item No. 038

# FENNEMORE CRAIG

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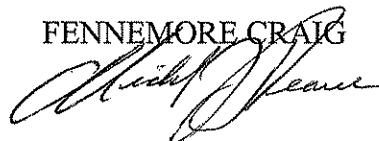
Home Builders is also uniquely interested in the social policy of affordable housing in the State of Arizona.<sup>1</sup> The ability to construct homes in a cost effective manner increases the ability to sell those homes to a broader market, which is in the interest of the home building industry. Home Builders' interest in this issue, however, goes beyond that. Too often, the real need for affordable housing in Arizona is overlooked when issues of land and water management are being discussed. Disruption of the laws concerning land title in the Lower Salt River and the administration of water resources located within the watershed will adversely affect the cost of housing in Arizona by raising costs associated with the development of sand and gravel resources, by increasing the cost of compliance with assured water supply requirements, and by increased costs of providing necessary utility services.

The development of the Salt River Valley was dependent upon harnessing the wildly fluctuating and often highly destructive flows of the Salt River. In its natural state, the alternatively flooding and dry river was not an "artery of commerce" but instead an impediment to the economic development of this region. Navigation of the Salt River for commercial enterprise is, at the very best, insignificant compared to the economic benefit of conserving the flows by reservoir storage and controlled release. The two goals are mutually inconsistent in this particular watershed, and the decision was made, before statehood, to use the flow for water supply and electrical production, rather than for transportation. Thus, the determination should be made that the Lower Salt River was not navigable in fact at the time of statehood.

Thank you for the opportunity to comment on this important issue. If we can assist the Commission further in its deliberative process, please let us know.

Sincerely,

FENNEMORE CRAIG



Michael J. Pearce

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<sup>1</sup> The issue of declining housing affordability in Arizona was studied by the Arizona Department of Commerce in the late 1990s. Its report, *Where Will Our Children Live?* makes the point that affordable housing is an issue of concern to all Arizonans, not just the home building industry. Some of the statistics in that report are quite startling. For example, the report notes that in Gila, La Paz and Pinal Counties, home values are increasing at almost three times the rate of per capita income. In 1970, the report says that 61% of Arizona households could afford a median priced home. By 1996, only 28% of Arizona households could afford a median priced home. That is a decline of 33%, or one-third of our State's population.