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Arizona lawmaker withdraws bill that angered tribe, imperiled drought contingency plan

By Howard Fischer Capitol Media Services Feb 19, 2019 Updated 17 hrs ago



Rep. Rusty Bowers sought to protect farmers' water rights.

Mark Henle / Arizona Republic 2019



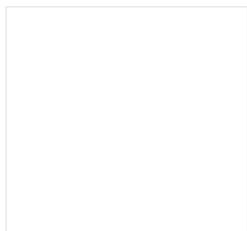
Gov. Stephen Roe Lewis of the Gila River Indian Community

Ralph Fresno / for the Arizona Daily Star

PHOENIX — House Speaker Rusty Bowers on Tuesday withdrew his bill that would repeal state laws on when farmers forfeit their water rights — legislation that the Gila River Indian Community said would cause it to withdraw from the multi-state drought contingency plan.

But Bowers' move did not get the tribe to sign the papers agreeing to provide Arizona with the 500,000 acre-feet of water it needs to make the drought plan a reality.

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After more than two hours of testimony, Bowers concluded there may be legal problems with what he is trying to do. He said his bill needs to be rewritten.

That, however, came only after some often angry statements in which Bowers accused the tribe of “vengeance” for pursuing the water rights claims he hoped his legislation would extinguish.

What happens now is unclear.

When Bowers introduced his legislation, Gila River Indian Gov. Stephen Roe Lewis canceled a meeting where the tribal council was supposed to approve providing the state 500,000 acre-feet of water between now and 2026. That is a key part of the state's plan to deal with the fact that its allocation of water from the Colorado River will be cut as Lake Mead keeps dropping due to drought.

But Lewis told Capitol Media Services late Tuesday that the decision by Bowers to withdraw his bill is not enough for him to now ratify the deal. Lewis wants some firm assurance that the proposal — or a variant — will not come back, ever.

The legislative session is expected to run through at least April, if not beyond, giving Bowers the opportunity to resurrect the bill.

And Bowers, in a statement after the meeting, said he will continue to pursue a remedy he said will help hundreds of farmers in the upper Gila River valley — if not more statewide — avoid having their water rights extinguished.

At the same time, Brenda Burman, commissioner of the U.S. Bureau of Reclamation, has given all the states in the Colorado River basin until March 4 to finalize their drought contingency plans.

would prevent
'nonmeat' from being
labeled as beef

If that deadline is not met, Burman will begin the process of taking suggestions of how she should decide who gets the water. And Arizona, as a junior partner in existing water agreements, could end up with even less water than under the drought contingency plan.

Lewis said there is one thing that could convince him to go ahead with the agreement by the March 4 deadline: assurances by Gov. Doug Ducey that he would veto Bowers' bill if it reaches his desk.

Lewis said he has received no such assurances.

And gubernatorial press aide Patrick Ptak said Ducey is operating under the presumption that Bowers has thrown in the towel and "the issue is settled," something that the speaker has not actually said.

"USE IT OR LOSE IT"

Bowers wanted to repeal the state's long-standing "use-it-or-lose it" law, spelling out that if farmers don't use their water for five years they lose their rights.

It had been largely ignored until the tribe began asking courts to declare that some farmers in the upper Gila valley had forfeited their rights.

In more than two hours of testimony Tuesday, a parade of farmers from the upper Gila valley told the House Committee on Natural Resources, Energy and Water how the tribe is using that law to deny their ability to irrigate crops. The result is they cannot plant on some areas of their farms and are losing income, they said.

Bowers acknowledged that many of the farmers did not irrigate for at least five years. But that often occurred because the river changed course and washed away the land that was being irrigated.

He said the farmers then sought to divert those irrigation rights to other lands that, for different legal reasons, did not have rights. It was only then, he said, that the tribe decided to fight those efforts, citing the forfeiture law.

Shayne Earven, a fifth-generation farmer, said there are other reasons that farmers allow five years in between irrigating a field.

One, he said, is that to be certified an “organic” farm the ground needs to be either “virgin” or not farmed for five years. But the way the law is worded, doing that risks losing his rights to river water.

Whatever the reasons, Bowers lashed out at the tribe.

He said that, pursuant to existing settlements, the tribe is already entitled to 211,000 acre-feet of water a year.

“They don’t gain any money or any water through these (legal) actions,” Bowers said. “I do not understand, outside of vengeance, if there’s no water to be gained, why now?”

But tribal attorney Don Pongrace said Bowers is wrong.

He said various agreements give the tribe the right to more water than it actually is receiving. And Pongrace said that for any gallon of water that makes it down the river from the upper valley, the tribe gets to use about half.