

Showdown over water bill averted, clearing way for Arizona to finish Colorado River deal

[Ian James](#) Updated 10:08 p.m. MT Feb. 19, 2019

Proposed water legislation that might have upended Arizona's Colorado River drought plan was set aside by a leading Republican lawmaker following a day of tense debate.

The dispute over the bill pitted House Speaker Rusty Bowers, who introduced the measure on behalf of a group of farmers and ranchers, against the Gila River Indian Community, whose leader threatened to pull out of the drought deal if the bill went forward.

Bowers' decision to yank the bill from consideration on Tuesday appears to clear the path for Arizona to take a series of steps to finish its piece of the Drought Contingency Plan, which involves taking less water out of Lake Mead to prevent the reservoir from falling to critically low levels.

But even with what had seemed a difficult snag now somewhat smoothed over, Arizona still needs to finish a list of about a dozen water agreements to make its piece of the Colorado River deal work. And Arizona's top water managers said they expect completing those deals will take longer than a March 4 deadline set by the federal government.

If Arizona and California miss that deadline and don't sign the Drought Contingency Plan, the seven Western states that rely on the Colorado River face an uncertain process. Federal officials have said they plan to ask the seven governors for input on steps that should be taken to prevent the levels of Lake Mead from continuing to fall. It's not clear how that process would end, or whether it would spark more disagreements.

On Tuesday afternoon, though, one big potential obstacle appeared to be out of the way after Bowers announced at a House committee hearing that he was pulling House Bill 2476.

The legislation would have repealed the state's water-rights forfeiture law, a measure often called "use it or lose it," under which water rights may be forfeited if water hasn't been used for more than five years. The bill would have changed the law so that not using a water right wouldn't result in automatic forfeiture.

The legislation was aimed at addressing the concerns of farmers and ranchers in the Upper Gila Valley in southwestern Arizona, where the Gila River Indian Community has filed forfeiture cases against some landowners.

Bowers said in a statement that he will not move forward with the bill but will "continue to fight" for landowners in the Upper Gila Valley. He said because the bill "has nothing to do with the Drought Contingency Plan, I refused to include it in those discussions."

Bowers said he didn't want to give the Gila River Indian Community "veto power" over water legislation, but that he also didn't want to interfere with ongoing litigation that may affect well owners along tributaries of the Gila River. He said those factors, as well as the deadlines the state is facing, led him to hold the bill.

Bowers said he still thinks the bill focused on an important issue that has yet to be resolved.

"The concept of forfeiture of water rights is a terrible possibility for these thousands of rural folks across Arizona," Bowers said in a statement. "And it deserves the attention of the Arizona Supreme Court in seeking a just and reliable remedy."

Water rights are 'most important thing'

He pulled the bill after a committee hearing where farmers and ranchers spoke in support of the proposal and said cases brought by the Gila River Indian Community are hurting their livelihoods.

Tim Klump, a rancher who works in Cochise and Greenlee counties, said the legislation would help strengthen water rights in the state.

“To me and my family, water rights are the most important thing a landowner can have in Arizona,” Klump said. “And no one should be able to take your water rights just because you don’t use your water. Just like you shouldn’t be able to take my truck if I don’t use my truck for five years.”



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Arizona House hearing on the water bill

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Members of the House Natural Resources, Energy and Water Committee listened while Lois Reynolds stood at the microphone beside her husband, Leon, and explained their concerns. She said the Gila River changed course over the years and took over about 20 acres of their farmland. When they tried to move the water rights from that portion of the farm to adjacent land,

they were denied.

“Please repeal this law,” Reynolds said. “We will be losing everything if we’re next on the list to be sued by the Gilas in a forfeiture action.”

As she made her appeal, her voice quavered with emotion and tears welled in her eyes.

“This not only affects us, but it affects our children and grandchildren,” Reynolds said, “who have farming in their blood and would love to continue our family farming operation.”

Bowers voiced support for the couple. He also took aim at an earlier remark by Gov. Stephen Roe Lewis of the Gila River Indian Community, who said the bill was introduced because his community sought to enforce the forfeiture law against a group of “powerfully connected parties.”

Bowers asked Reynolds: “I’ve met you. Is that a powerful connection?”

“As much as I would like it to be, I don’t think so,” she replied, as laughter erupted in the room.

Bowers denounced the court cases that the Gila River Indian Community has brought against landowners under the forfeiture law.

“Ladies and gentlemen, these and others in my view are the salt of the earth, and I do not understand, outside of vengeance, if there’s no water to be gained, why does this happen? Why now are people being sued?” Bowers said. He said nothing the legislation does should affect pending litigation. But in the future, he said, “I do not see how anyone is harmed by removing a law that has never been exercised except for vengeance.”

Emphasizing his frustration with Lewis’ description, Bowers also asked Greenlee County Supervisor Richard Lunt: “Do you as a supervisor feel that you’re a powerfully connected party?”

“I hate to beat that drum, but it just grated me so bad,” Bowers said.

When Lewis stood to speak, he said the legislation would represent an assault on his community’s water rights, which were secured in a 2004 settlement. He reminded the lawmakers that his late father, Rodney Lewis, helped win that historic settlement after a decades-long legal fight.

“It’s a matter of principle that we’re talking about here. It’s also a matter of law,” Lewis said. “We are a sovereign nation. We don’t take this lightly.”

When Lewis took questions from the lawmakers, state Rep. Mark Fincham, R-Oro Valley, asked him pointedly: “Gov. Lewis, would you say that you’re powerfully connected?”

Lewis paused, looking irritated by the question, then answered.

“I would say that I am powerfully connected to our land and to our water, for over thousands of years,” Lewis told him. “Connected to our creator, yes.”

Speaking earlier Tuesday during a committee meeting focusing on the drought plan, Lewis called Bowers’ bill unconstitutional and said it represents a direct “attack” on the community’s water rights.

“We view this as a slap in the face of the community,” Lewis said while Bowers listened several chairs away at the same table. “I am confident that the Arizona Legislature will do the right thing and reject this bill outright.”

'Use it or lose it'

Lewis argued the bill would interfere with a 2017 ruling by the 9th U.S. Circuit Court of Appeals, which found that a group of farmers and ranchers near Safford gave up rights to Gila River water under the law because they hadn’t diverted the water for more than five years.

Lewis called the bill “the epitome of special-interest legislation that

undermines critical principles of Arizona water law.”



Gov. Stephen Roe Lewis of the Gila River Indian Community speaks at a meeting of Arizona's steering committee for a Colorado River drought plan on Tuesday. He warned that a piece of water legislation introduced by House Speaker Rusty Bowers represents a "slap in the face" and would derail the drought plan. (Photo11: Ian James/The Republic)

“The Community cannot be singled out for legislative attack by the most powerful members of the Arizona House of Representatives, and still view itself as a genuine partner in solving the state’s water crisis,” Lewis told the drought committee, which includes representatives of water districts, cities, farmers, tribes and businesses.

He said the bill was introduced because the Gila River Indian Community has sought to enforce the forfeiture law against a group of “powerfully connected parties” in the Gila River’s Upper Valley.

Lewis said the community has brought a limited number of cases so far to defend its water rights.

“But I can no longer promise that we will hold back any longer,” he said. “My council and my people will not sit idly by while attacked in this way.”

The Gila River Indian Community’s involvement in the Colorado River drought plan is key because the community is entitled to about a fourth of the water that passes through the Central Arizona Project Canal, and it has offered to kick in some water to make the drought agreement work.

'We have made a great plan'

When Lewis had finished reading his statement, Bowers responded. He insisted the water legislation is a separate matter and shouldn't be linked to the proposed Drought Contingency Plan.

“I am surprised at the use of this venue to make this the focus of what should be a more celebratory situation,” Bowers said.



After eight months of talks and negotiations on a Colorado River drought plan, members of Arizona's steering committee posed for a group picture at their final meeting on Feb. 19. (Photo11: Ian James/The Republic)

He defended the bill, saying the forfeiture law has only recently begun to be enforced in Arizona, and it presents a “burden” for thousands of well owners.

The Mesa Republican said he still wants to see the completion of Arizona’s drought plan, which was negotiated during months of talks.

“We have made a great plan,” Bowers said. “It is not connected with others, either legislative actions or priorities.”

March 4 deadline for deal

The spat erupted just as Gov. Doug Ducey and other state officials were expressing optimism about putting the finishing touches on Arizona’s plan for taking part in the Drought Contingency Plan along with California and Nevada.

Arizona’s Legislature passed a package of legislation on Jan. 31 approving the state’s participation in the plan. The deal would involve taking less water out of Lake Mead, which is now just 40 percent full, to prevent the reservoir from falling further.

Arizona officials are still working their way down a list of more than a dozen internal water deals that need to be signed to make the plan work. Two of those agreements would require the approval of the Gila River Indian Community.

Federal Reclamation Commissioner Brenda Burman has been pressing for the states to finish the drought plan. She initially set a deadline for Jan. 31 for all the states to have the deal done. When that didn’t happen, she announced another deadline: March 4. If California and Arizona don’t finish drought plans by that date, Burman warned, the Interior Department will start receiving input from the governors of seven Western states about the steps it should take to prevent Lake Mead from falling to perilously low levels.



The CAP Canal winds through a neighborhood in Phoenix as seen from the Deem Hills Recreation Area on December 12, 2018. (*Photo11: David Wallace/The Republic*)

Burman has said if all seven states are able to finish drought plans before then, the government would call off the process.

But that's looking increasingly difficult. Arizona's top water officials [told Burman in a letter last week](#) that while they are working as quickly as they can, they are unlikely to finish all the necessary agreements by that date.

"We will do our utmost to complete all intrastate agreements as soon as possible, and some of them are very likely to be completed by March 4, but not because of any Federal deadline," Tom Buschatzke of the Arizona Department of Water Resources and Ted Cooke of the Central Arizona Project wrote in the letter. "While deadlines can be useful to bring things to completion, the imposition of another deadline, March 4, is counterproductive and a potential distraction to completing the intrastate agreements within Arizona."

'A lot of fluidity'

The Colorado River irrigates more than 5 million acres of farmlands and supplies about 40 million people in cities from Denver to Los Angeles. Nineteen years of drought and chronic overuse, combined with the worsening effects of climate change, have pushed the levels of the river's reservoirs lower and lower.

A first-ever shortage could be declared in 2020 if federal officials determine this August that the lake is projected to be below elevation 1,075 feet at the start of the year.

Under the Drought Contingency Plan, Arizona's total use of Colorado River water would decrease by more than 500,000 acre-feet, or 18 percent of the state's legal entitlement, during the first year of a shortage. That will mean taking less water from Lake Havasu and pumping less into the 336-mile CAP Canal, which cuts across the desert, passes through Phoenix and ends in Tucson.

Farmers in central Arizona face the biggest water cutbacks under the plan, and the Legislature has approved funding to help their irrigation districts [drill new wells and build other infrastructure](#) as they begin to rely entirely on groundwater.

The package of legislation that was passed last month appropriated \$9 million for this groundwater fund for Pinal County growers.

During Tuesday's House committee hearing, lawmakers voted 8-4 to endorse a bill that would give an additional \$20 million to the farmers' irrigation districts for groundwater infrastructure. The bill's main sponsor, Rep. David Cook, R-Globe, said the state money would be used as matching funds while the growers apply for federal grants.

One of the Democrats who voted against the measure was Rep. Andres Cano, D-Tucson, who called it "a lot of money" and said it would go against the terms of previous negotiations on the legislation that passed last month.

Arizona's plan for divvying up the water cutbacks during a shortage involves deliveries of "mitigation" water to help lessen the blow for some farmers and other entities, as well as compensation payments for those that contribute water.



The CAP Canal winds through a neighborhood in Phoenix as seen from the Deem Hills Recreation Area on December 11, 2018. (*Photo11: David Wallace/The Republic*)

Those payments are to be covered with more than \$100 million from the state and the Central Arizona Water Conservation District, which manages the CAP Canal. Much of the money would go toward paying for water from the Colorado River Indian Tribes and the Gila River Indian Community — if the community doesn't pull out of the deal.

After Bowers announced he wouldn't move forward with his bill, Lewis said it was too soon to say what comes next.

"We'll have to wait and see. We'll see how much of a change it makes," he told reporters in front of the Legislature. "It's hard to say at this point. There is a lot of fluidity here."

Reporter Andrew Nicla contributed to this article.

Environmental coverage on azcentral.com and in The Arizona Republic is supported by a grant from the Nina Mason Pulliam Charitable Trust. Follow the azcentral and Arizona Republic environmental reporting team at environment.azcentral.com and at OurGrandAZ on [Facebook](#), [Twitter](#) and [Instagram](#).

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