



3012 DON QUIXOTE DR NW, ALBUQUERQUE, NM 87104
JOSH@MANNWATERLAW.COM 505-999-8788

September 4, 2025



Elizabeth Anderson
New Mexico State Engineer
5550 San Antonio Drive NE
Albuquerque, NM 87109

Re: Protest of Application No. (RG-50 & RG-440 into RG-17065 et al.)-T-2 for a Permit to Temporarily Change Point of Diversion, Purpose, and Place of Use of Groundwater within the Rio Grande Underground Water Basin of the State of New Mexico.

Dear Ms. Anderson,

The Pueblo of Isleta (Isleta) hereby protests Application No. (RG-50 & RG-440 into RG-17065 et al.)-T-2 for a Permit to Temporarily Change Point of Diversion, Purpose, and Place of Use of Groundwater within the Rio Grande Underground Water Basin of the State of New Mexico filed by Niagara Bottling, LLC. (Niagara), c/o Todd Garber, Sr. Corporate Counsel, 1440 Bridgegate Dr., Diamond Bar, CA 91761, and Public Service Company of New Mexico, c/o Gary Barnard, Executive Director, Mail Stop Z120, 2401 Aztec NE, Albuquerque, NM 87107 and the Village of Los Lunas (Village), c/o Seth Fullerton, 123 E. Marcy St, Suite 200, Santa Fe, NM 87501 on May 22, 2025, and amended on June 26, 2025. (the Application).

The co-applicants propose to temporarily discontinue, for a period of ten (10) years commencing on date of approval of a final permit from the State Engineer, the diversion of 500 acre-feet per annum (afa) Consumptive Use (CU) water rights with a 1903 priority date under License No. RG-50 and RG-440, from three wells owned by the Public Service Company of New Mexico, used for industrial purposes, well RG-440, well RG440 S-2 and well RG-50 CLW, all in Bernalillo County, New Mexico.

The co-applicants further propose to temporarily transfer the above-described 500 acre-feet per annum of consumptive use water rights to offset depletions on the Rio Grande resulting from pumping of ground water authorized by State Engineer Permit No. RG-17065 et al., for domestic, municipal, industrial, commercial, and any and all purposes of use related thereto or allowed by Permit RG-17065 et al. with a place of use consisting of the service area of the Village of Los Lunas, Valencia County, New Mexico. The seven groundwater points of diversion permitted under RG-17065 et al. are located on land owned by the Village of Los Lunas and are located within the San Clemente Grant. Said wells are generally located within a one-mile radius of the I-25 and NM Highway 6 intersection within the limits of the Village of Los Lunas, Valencia County, New Mexico.

Isleta protests the application to transfer 500 acre-feet of water rights for use at Niagara's bottling facility. Approval of this application would impair Isleta's senior water rights, harm the public



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welfare, and be contrary to the conservation of water in New Mexico.

First, there are serious questions about whether the rights proposed for transfer are valid, continuously used, pre-1907 surface or pre-1956 groundwater rights, as required by law and the State Engineer's administrative guidelines. Without valid rights to offset pumping, the transfer cannot lawfully proceed.

Second, the co-applicants propose to use groundwater immediately south of Isleta's boundary for industrial bottling and export outside the Middle Rio Grande Valley. Such pumping would impair Isleta's senior water rights by reducing flows in the Rio Grande and connected groundwater, cutting supplies needed for the Pueblo's consumptive and cultural uses. See *Pueblo of Sandia v. City of Rio Rancho*, No. D-1329-CV-2023-820 (13th Jud. Dist. Ct., Sandoval Cnty., N.M., July 30, 2025)(denying Rio Rancho's transfer application based on impairment of Sandia Pueblo's water rights and detriment to the public welfare). Exporting scarce groundwater in bottles undermines conservation and offers no local or public benefit. The Office of the State Engineer has long recognized that the Middle Rio Grande is fully appropriated and that groundwater pumping is hydrologically connected to the river. Approval of this transfer would authorize new, junior depletions from wells beside Isleta's southern boundary, directly reducing the water resources needed to sustain the Pueblo's senior and federally protected rights.

Third, the Rio Grande system is already in crisis. New Mexico is more than 120,000 acre-feet in debt under the Rio Grande Compact, and climate change, combined with groundwater pumping, continues to reduce flows. Authorizing additional consumptive use for export would exacerbate these challenges and is contrary to the State Engineer's duty to prevent impairment, protect the public welfare, and conserve water for future generations.

For these reasons—the questionable validity of the rights proposed for transfer, the adverse hydrologic impacts of using groundwater for export, the inconsistency with conservation and public welfare, and the impairment of Isleta's senior rights—the application should be denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Joshua Mann", written over a horizontal line.

Joshua Mann
Water Counsel for the Pueblo of Isleta

