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PRESS RELEASE

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Background

P.T. Newmont Minahasa Raya (PTNMR), on Tuesday, January 9th, began the reading, in front of a panel of five judges, of the first of three “pledoi” – the response to the prosecution’s charges of environmental crimes against the company and Richard B. Ness, its President Director. The three pledoi summarize over a year and a half of hearings, in which overwhelming evidence was presented to the court to prove that the area around its mine, including Buyat Bay, is not polluted, that the mine’s mill tailings were not a hazardous waste, that the mine’s mill tailings did not impact the health of the community and that the proper permits were in place that authorized PTNMR to operate the mine.

In the first of three pledoi, the company’s legal defense team is responding to the allegations of pollution against PTNMR. Over the course of the next few court sessions, the second pledoi will be read, which refutes the allegations against the company’s President Director, Richard B. Ness. The third pledoi will be read by Richard Ness, and it provides a more personal defense against the allegations.

P.T. NEWMONT MINAHASA RAYA SUBMITS RESPONSE TO PROSECUTION’S BASELESS CHARGES

*No Pollution Means Unjust Charges;
PTNMR and Its President Director Should Be Exonerated*

(Manado, 10 January 2007) PT Newmont Minahasa Raya, as first defendant in the long-running court ordeal in Manado, North Sulawesi, concluded the reading of the company’s first ‘pledoi’, and submitted the comprehensive legal document, consisting of thousands of pages of legal arguments, analysis, and written evidence, to the panel of judges.

PTNMR emphasizes, in its pledoi, that this case was flawed from the beginning. It cannot be denied that Indonesian laws and procedures were violated during the police investigation phase of this case. Every person residing in Indonesia is entitled to certain fundamental rights when subjected to a police investigation. One of those fundamental rights entitles a person or company to request that the police conduct a fair investigation by questioning witnesses who might provide evidence favorable to the suspect. In this case, despite written instructions from the prosecutor to the police to examine such witnesses, the police refused to do so. This and numerous other violations of procedure have resulted in a denial of due process. These serious legal violations should be taken into account by the panel of judges when assessing the prosecutor’s case.

Luhut M.P Pangaribuan, the lead lawyer for Newmont’s defense said: “Our first pledoi has clearly stated to the panel of judges that the charges against the company are unjust and that

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the investigation has not followed Indonesian law. Ultimately it is the evidence – not the views, opinions, and wishes of third parties – that matters. The evidence in this case demonstrates beyond any doubt that the company is not guilty of any crime.”

Elaborating further, Pangaribuan pointed out that “In the simplest of terms, Buyat Bay is the ultimate piece of evidence in this case. The bay is still there for anyone to see and analyze. The prosecution’s refusal to follow through on the panel of judges’ order for additional sampling of the waters of Buyat Bay raises many unanswered questions”. On 14 July 2006, the panel of judges had ordered a retesting of the water quality in Buyat Bay (legally binding under Indonesian criminal code (KUHAP) and that two laboratories; Sarpedal (a laboratory under the jurisdiction of Indonesia’s Agency for Environmental Impact Handling (BAPEDAL) and ALS International was to conduct the retesting. Although the prosecution refused to comply with the Judges' order, ALS, an independent and internationally accredited analytical laboratory, conducted the resampling with the approval of the panel of Judges. The results were not surprising: Buyat Bay is clean and that its water quality is excellent. Levels of mercury and arsenic in the water are very low, well within any existing water standards.

PTNMR’s pledoi, read out in about 13 hours, also highlighted the many flaws and errors in the prosecution’s case, among them: a significant amount of the evidence presented by the prosecution was and is inadmissible in accordance with the law on evidence; many of the prosecution’s ‘expert witnesses’ have no expertise in the field of their testimonies; and the numerous procedural errors in water sampling by the National Police. The court was also reminded of how pollution allegations against PTNMR surfaced even before the mine came into full operations.

Despite all of these procedural and evidentiary violations by the prosecution, the evidence presented throughout the 18-month long trial, one of the longest in Indonesia’s history, demonstrates clearly that PTNMR caused no environmental pollution in Buyat Bay. Under Indonesian law, the burden of proof lies with the prosecution and after months of trial and volumes of data, there is not only a lack of evidence to carry the burden of proving the alleged pollution, but the defense has proved by overwhelming evidence that Buyat Bay is not polluted. The facts and data submitted before the court prove that the levels of arsenic and mercury levels found in the local villagers are normal, the fish meet or exceed internationally recognized quality standards, that the seawater is of higher quality than required under applicable Indonesian standards, and that Buyat Bay continues to be an important source of fish for the local residents and the market. In fact, comparison of Buyat Bay with the other oceans of the world also confirms that the level of dissolved arsenic and mercury in Buyat Bay is in the same range as found in the Atlantic and Pacific oceans, and in the coastal areas of USA, Japan and UK.

Due to insufficient time, the reading of the second pledoi, which began late in the afternoon, will be continued tomorrow, Thursday, 11th January 2007.

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