

**Rectification of New Gold Inc.'s press release entitled:**  
**"New Gold Clarifies Recent Misinformation Regarding its Cerro San Pedro Mine"**  
**(Vancouver, November 2, 2009)**

November 9<sup>th</sup>, 2009

Intelligence & Assessment  
British Columbia Securities Commission  
P.O. Box 10142, Pacific Centre  
Vancouver, British Columbia  
V7Y 1L2  
[inquiries@bcsc.bc.ca](mailto:inquiries@bcsc.bc.ca)

To whom it may concern,

We are writing with regard to a recent press release issued by New Gold Inc. (TSX: NGD) on the 2<sup>nd</sup> of November, 2009, on the matter of a recent Mexican court ruling that annuls its land use change permit. We believe that this press release contains important omissions and errors of fact that could potentially seriously misinform shareholders about the current legal status of New Gold's gold and silver mining project at Cerro de San Pedro, San Luis Potosí, Mexico.

The press release states that the company is currently operating the project with all necessary permits. This is not true. On the 24<sup>th</sup> of September, 2009, the Mexican Federal Tribunal of Administrative Justice ruled that the company's land-use change permit was illegal. This is a final decision that settles a long line of appeals and legal revisions over the past years. The company neglects to mention this ruling in its press release when in fact it is of central importance to share-holders. The Cerro de San Pedro project is one of three operating mines owned by the company. The Mexican courts have now unequivocally ruled that it must be shut down. This will lead to the loss of between 330 000 and 360 000 oz of gold production, between 1.1 and 1.3 million oz of silver and 15 million pounds of copper.

The fact that the courts have ruled that the company has been operating illegally since October 2005 exposes the company to further suits for damages and liabilities. With this recent ruling, the Mexican law offices of Lic. Hector Barri publicly announced on October 29<sup>th</sup>, 2009 its intentions to press both civil and criminal charges against the company and company's management.

Returning to the press release in question we provide in annex an itemized rectification of the claims and omissions made by New Gold.

On behalf of the Frente Amplio Opositor a la Minera San Xavier, San Luis Potosí,

Dr. Juan Carlos Ruiz Guadalajara  
Colegio de San Luis Potosí  
San Luis Potosí, San Luis Potosí

Cc/ :  
Compliance and Disclosure  
Toronto Stock Exchange  
First Canadian Place  
77 Adelaide Street West  
Toronto, Ontario  
M5X 1A4  
[mani.sanghera@tsxventure.com](mailto:mani.sanghera@tsxventure.com)

Francis Manns  
Disclosure Standards for Mining Companies  
Toronto Stock Exchange  
First Canadian Place  
77 Adelaide Street West  
Toronto, Ontario  
M5X 1A4  
[francis.manns@tsx.com](mailto:francis.manns@tsx.com)

## **ANNEX:**

### **STATEMENTS MADE IN PRESS RELEASE:**

"New Gold Inc. ("New Gold") (TSX and NYSE AMEX - NGD) confirms that all permits, licenses, concessions or authorizations that are required to operate its Cerro San Pedro Mine are valid and in force."

### **RECTIFICATION:**

-On the 24<sup>th</sup> of September, 2009 the Federal Tribunal of Administrative Justice emitted the following decision:

"...toda vez que es fundada la queja que se resuelve, con fundamento en el artículo 239-B, fracción IV, del Código Fiscal de la Federación, se deja sin efectos la resolución de autorización condicionada al proyecto minero, a favor de Minera San Xavier, S.A. de C.V., contenida en el oficio S.G.P.A./DGIRA.DG.0567/06 de fecha 10 de abril de 2006, emitida por el Director General de Impacto y Riesgo Ambiental de la Secretaría de Medio Ambiente y Recursos Naturales y se otorga a éste, quien incurrió en incumplimiento a la sentencia dictada por este Órgano Jurisdiccional el 5 de octubre de 2005, el término de VEINTE DÍAS para que emita y notifique a la parte actora la resolución a través de la cual dé el debido cumplimiento a la sentencia..." [Cumplimiento de ejecutoria exp. 170/00-05-02-9/634/01-PL-10-04-QC-DA, pgs. 239-240]

"Be it resolved, on basis of art. 239-B:IV of the Federal Fiscal Code, that the authorization accorded to Minera San Xavier, S.A. de C.V. in the permit S.G.P.A./DGIRA.DG.0567/06 by the Director General of Environmental Impacts and Risks at the Ministry of the Environment and Natural Resources (SEMARNAT) is null and void. By our order the SEMARNAT, which has already ignored a previous ruling by the court on the 5<sup>th</sup> of October, 2005, has 20 days to advise the affected party and carry out the sentence."

The company has therefore been operating without a legal permit since it was informed of this decision on the 14<sup>th</sup> of October, 2009.

"New Gold has filed an appeal to a recent decision of the Federal Court of Fiscal and Administrative Justice in Mexico pertaining to the process by which the Environmental Impact Statement ("EIS") for the Cerro San Pedro Mine was approved in 1999."

First: all appeals or injunctions or requests for legal protection that are brought before a Mexican court are communicated immediately to all affected parties. Lic. Hector Barri, who has been representing the organization Pro San Luis Ecologico in this matter, has not been informed of any appeal.

Secondly: there is no possibility of appeal for this decision because it comes at the end of a long process of judicial revisions and appeals as summarized here with reference to the relevant dockets:

-On June 23 2004, Noveno Tribunal Colegiado en Materia Administrativa ordered the Federal Tribunal of Administrative Justice to cancel the land use change permit the company had received from the Ministry of the Environment and Natural Resources (SEMARNAT) on the 26<sup>th</sup> of February, 1999. [D.A.]

65/2004-873]. The Noveno Tribunal is final instance of appeal in administrative law in Mexico and its decisions are without appeal.

-On the 5<sup>th</sup> of Oct., 2005. The Federal Tribunal of Administrative Justice carried out this ruling commenting that under no condition could a land use change permit be accorded for this project. [exp. 170/00-05-02-9/634/01-PL-05-04]

- Despite this ruling. The SEMARNAT emitted a new land use change permit to the company on April 10<sup>th</sup>, 2006 [S.G.P.A./DGIRA DG 0567/06]

-This permit was appealed by Pro San Luis Ecologico and its lawyers. This appeal process led once again to a decision by the Noveno Tribunal Colegiado en Materia Administrativa, dated April 17, 2009, which informs the Federal Tribunal of Administrative Justice that the permit accorded in 2006 was illegal and that this court must instruct the SEMARNAT to revoke it. This was a unanimous decision pronounced complete and without appeal [R.A. 59/2009]

-On the 24<sup>th</sup> of September, 2009 the Federal Tribunal of Administrative Justice carried out its sentence, cited above.

-The concerned parties – SEMARNAT, New Gold and Pro San Luis Ecologico – were informed of this decision on the 14<sup>th</sup> of October, 2009. From this date onwards the company has had full knowledge that its permit had been nullified.

-According to the terms of the decision SEMARNAT has until the 13<sup>th</sup> of November to insure that New Gold's operations at Cerro de San Pedro are stopped given that it has no valid land-use permit.

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"New Gold is a welcome member of the Cerro de San Pedro community and has demonstrated its commitment to corporate social responsibility through meaningful support to our schools, health services and infrastructure improvement," stated Mr. Santos Loredo Tenorio, President of the Cerro de San Pedro Municipality. "The company's contribution to sustainable community development and our future is greatly appreciated."

There is no reference for this citation. It is misleading. It uses a statement made by a municipal authority (at an unknown time) about the CSR programmes of the company to suggest his endorsement of the project in general. On Saturday Oct. 31<sup>st</sup> in Cerro de San Pedro Mr. Santos Loredo Tenorio declared before witnesses that he would respect the court decision.

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"New Gold's Cerro San Pedro Mine has had excellent operational performance in 2009 and has an enviable record of meeting its environmental and social

New Gold lost its land use change permit precisely because of serious and unacceptable degree of environmental impacts and risks that its mine would produce. The permit was found to be in violation of the General Law of Ecological Equilibrium,

*responsibilities."*

individual rights to water and health guaranteed by the Mexican Constitution, as well as a 1993 decree by the State of San Luis Potosí which declared the zone around Cerro de San Pedro a reserve for the preservation and restoration of rare and endemic species of flora and fauna.

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*"The operation achieved ISO 140001 certification of its Environmental Management System to ensure globally recognized standards are achieved and routine third party monitoring and reporting is performed in accordance with the ISO requirements."*

The group of experts from the Universidad Autonoma de San Luis Potosí assembled by the company to monitor the project under the terms of its EIA has only met twice since 1999 and has not released a single assessment of the environmental impacts of the project.

Nowhere in the company's most recent Sustainability Report (2008) does it document what other third party might be providing the necessary oversight for its ISO 140001 certification.