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The Drummond Report and Environmental Protection

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The sweeping Drummond Report, which was delivered to the Government of Ontario on February 15, 2012, has called for transformational change in the way the Ministry of the Environment (“MOE”) and the Ministry of the Natural Resources (“MNR”) regulate and protect the province’s environmental and natural heritage.

The Report recognizes that increasing demands have been placed on the two ministries but their overall capacity - financial resources, staffing levels and in-house expertise – have not kept pace. The Report foresees that these demands will only increase in the future when the fiscal restraints recommended in the Report will further limit the regulatory capabilities of the ministries.

To address this challenge, the Report makes 8 recommendations:

1. Move Towards Full Cost Recovery and User-Pay Models

With the exceptions of the Drive Clean program and renewable energy approvals, the existing environmental programs are not operated on a full cost recovery basis. The Report recommends that all licensing and approval programs should be run on this basis placing the financial burden on the beneficiaries of the program instead of the public.

2. Rationalize Roles and Responsibilities for Environmental Protection That Are Currently Shared Across Levels of Government

The Report describes what it calls “jurisdictional crowding” by all three levels of government in environmental protection and the resulting inefficiencies, which have been obvious to many for decades. The Report provides no suggestions as to how rationalization can be accomplished.

3. Employ a Risk-Based Approach for Environmental Approvals That Focuses on Improving Outcomes and Prevention

The Report lauds the new MOE approvals process launched by the MOE in 2011 but underlines that it is an approach that has not yet been adopted by the MNR in its licensing responsibilities.

4. Review Opportunities to Further Streamline the Environmental Assessment Process, Such as Co-ordinating Further With the Federal Government’s Process or Integrating it With Certain Approvals

The Report cites the Supreme Court’s 2010 decision in *MiningWatch Canada v. Canada (DFO)* in support of the proposition that the province and federal government can, and should, minimize duplication by using the coordination mechanisms provided for in the federal environmental assessment legislation. In particular, federal and provincial governments can adopt mutually agreeable terms for coordinating environmental assessment. Full use of this authority would serve to reduce unnecessary, costly and inefficient duplication.

5. Place Greater Emphasis on Prevention and the Polluter – Pays Principle for Contaminated Sites Using Appropriate Financial Tools, Such as Financial Assurance

The Report encourages the province to do more by way of new governance models, financial management,

financial assurance and implementation to minimize the risk of the province having to pay for the remediation of environmental contamination.

6. Review the Effectiveness of the Current Governance Structure of the Ontario Clean Water Agency (“OCWA”) to Evaluate the Merits of Restructuring it As a For-Profit, Wholly Owned Government Entity

The Report concludes that OCWA's current business model is neither sustainable nor competitive. By restructuring the agency more on the model of a private (but government owned) enterprise, it could prove to be a profitable venture.

7. Rationalize and Consolidate the Entities and Agencies Involved in Land Use Planning and Resources Management

The report suggests that efficiencies of scale could be obtained by merging the Niagara Parks Commission, the St. Lawrence Parks Commission and Ontario Parks. It also suggests that the number of advisory groups for forest, fish and wildlife programs could be reduced by creating multidisciplinary groups. It concludes that in central southern Ontario, a single agency could be created to deliver natural resource management activities.

8. Ensure that the Government’s Approach to the Ring of Fire Maximizes Opportunities for Aboriginal People and All Ontarians

Ring of Fire Mining activity (about 150 miles west of James Bay) is escalating. The Report identifies the opportunity to both realize major mineral development and improve socio-economic opportunity and quality of life for Aboriginal people and other residents of the North. It suggests that the province should take innovative approaches to expand labour-market and training programs for First Nations communities.

The foregoing are, of course, all recommendations created in a political vacuum. It remains to be seen what steps the political leadership of the province may actually be prepared to undertake.

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