

**REGIONAL DIRECTOR FOR
ENVIRONMENTAL PROTECTION
IN CRACOW**

OP-I.6401.15.2021.GZ

Cracow, January 27, 2021

D E C I S I O N

Pursuant to Article 56 (2) items 1 and 2 and (4) item 3 of the Act of April 16, 2004 on nature protection (consolidated text: Journal of Laws of 2020, item 55 as amended) and Article 104 of the Code of Administrative Procedure (consolidated text: Journal of Laws of 2020, item 256 as amended) in connection with Article 6 (1) items 2, 7, and 12, and (2) of the Regulation of the Minister of the Environment of December 16, 2016 on the protection of animal species (Journal of Laws of 2016, item 2183; as amended: Journal of Laws of 2020, item 26), after examining into the application of the State Water Holding Polish Waters with its registered office in Warsaw, 59A. Żelazna Street, represented by the Director of Regional Water Management Authority in Cracow, acting through the Proxy, Mr. Dariusz Adamek (AECOM Polska Sp. z o.o. – based upon the power of attorney dated January 12, 2021, ref.: KR.ROO.01204.4.2021.PP), as developed on January 19, 2021 (reception date: January 19, 2021) and subsequently updated on January 22, 2021, on the issuance of a permit for derogations from certain activities prohibited for protected species:

- I. I hereby permit** the State Water Holding Polish Waters with its registered office in Warsaw, 59A. Żelazna Street, represented by the Director of Regional Water Management Authority in Cracow, acting through the Proxy, Mr. Dariusz Adamek (AECOM Polska Sp. z o.o.), in connection with the task *“Construction of a pumping station for mobile pumps to drain the Lesisko complex”* to be implemented within the Odra-Vistula Flood Management Project under the contract titled: *“Works Contract 3A.6 Construction of a pumping station for mobile pumps to drain the Lesisko complex”*, work scope of which includes activities carried out on registered plots no. 142/2, 143/1 register area – Nowa Huta 0056, and no. 37, 38/2, 40/1, 41/4, 42/1, 318/2, 43/3, 230/7, 236/12, 242/5, 246/6, 247/5, 247/9, 260/4, 260/6, 285/1, 294/1, 317, 316, 33/30, 38/6, 39/2, 320/2, 42/7, 42/9, 44/2, 45/24, 45/20, 45/26, 46/18, 46/19, 52/3, 214/13, 214/15, 214/17, 222/6, 222/8, 223/5, 223/8, 225/14, 226/14, 227/12, 228/17, 228/21, 228/19, 231/3, 232/6, 238/4, 240/7, 241/3, 242/7, 243/7, 244/12, 244/14, 245/8, 246/12, 246/14, 247/13, 253/14, 254/10, 294/4, 310/2, 302/6, 302/8, 305/6, 252/8, 319/6, 343, 342, 133/13, 297/14, 260/5, 260/7, 282/5, 258/4, 282/15, 258/5, 234/2, 258/16, 282/14, 253/10, 252/2, 262/1, 322, 256 register area – Nowa Huta 0058, Municipality of Cracow, District of Cracow, Małopolskie Province, for the following:
1. Intentional catching, destruction of habitats or mainstays remaining breeding sites, raising sites for offspring, resting sites, migration or feeding areas, and for intentional transfer from sites of regular occurrence to other sites in case of about 150 specimens of Roman snail (*Helix pomatia*);

2. Destruction of habitats or mainstays remaining breeding sites, raising sites for offspring, resting sites, migration or feeding areas for about 20 specimens of buff-tailed bumblebee (*Bombus terrestris*);
3. Intentional catching, destruction of habitats or mainstays remaining breeding sites, raising sites for offspring, resting sites, migration or feeding areas, and for intentional transfer from sites of regular occurrence to other sites in case of amphibians and reptiles belonging to the following species: common toad (*Bufo bufo*) – about 50 specimens, European green toad (*Pseudepidalea viridis*) – about 10 specimens, edible frog (*Pelophylax esculentus*) – about 130 specimens, pool frog (*Pelophylax lessonae*) – about 45 specimens, common frog (*Rana temporaria*) – about 10 specimens, common newt (*Lissotriton vulgaris*) – about 5 specimens, sand lizard (*Lacerta agilis*) – about 15 specimens, and grass snake (*Natrix natrix*) – about 5 specimens;
4. Destruction of habitats or mainstays remaining breeding sites, raising sites for offspring, resting sites, migration or feeding areas for the following species of birds: common whitethroat (*Sylvia communis*) – 1 pair, grey heron (*Ardea cinerea*) – 2 pairs, red-backed shrike (*Lanius collurio*) – 2 pairs, Eurasian blackcap (*Sylvia atricapilla*) – 3 pairs, common cuckoo (*Cuculus canorus*) – 1 pair, fieldfare (*Turdus pilaris*) – 2 pairs, European nightjar (*Caprimulgus europaeus*) – 2 pairs, Eurasian blue tit (*Cyanistes caeruleus*) – 4 pairs, common chiffchaff (*Phylloscopus collybita*) – 4 pairs, white wagtail (*Motacilla alba*) – 2 pairs, common nightingale (*Luscinia megarhynchos*) – 2 pairs, river warbler (*Locustella fluviatilis*) – 1 pair, common starling (*Sturnus vulgaris*) – 6 pairs, song thrush (*Turdus philomelos*) – 2 pairs, yellowhammer (*Emberiza citrinella*) – 6 pairs, golden oriole (*Oriolus oriolus*) – 1 pair, and common chaffinch (*Fringilla coelebs*) – 4 pairs;
5. Intentional scaring or disturbing of one family of beavers (*Castor fiber*);
6. Destruction of habitats or refuges, which are the sites of breeding, rearing the young individuals, migration or feeding for about 5 common moles (*Talpa europaea*) and 2 hedgehogs of unidentified species (*Erinaceus sp.*);
7. Destruction of habitats or refuges, which are the sites of breeding, rearing the young individuals, migration or feeding for bats belonging to the following species: common noctule (*Nyctalus noctula*) – about 25 specimens, soprano pipistrelle (*Pipistrellus pygmaeus*) – about 10 specimens, and Daubenton's bat (*Myotis daubentonii*) – about 5 specimens.

II. The permit is valid from May 1, 2021 to June 30, 2023, under the following conditions:

1. The works shall be carried out under environmental supervision by experts in biology of animal species under the permit. The Regional Director shall be provided with a list of persons performing the environmental supervision up to 7 days prior to the commencement of works associated with violation of bans listed under the application, including documenting of their experience.
2. Transfer of Roman snails is feasible only during their ground-based activity, i.e. from March 1 to September 30.
3. Transferring particular specimens of Roman snails shall be done in a way avoiding injuring or killing them. The time of keeping the specimens shall be limited to minimum.
4. All Roman snails present within the investment site shall be moved to areas selected by the environmental supervision, at inclusion of their current habitat needs.

5. Method and time of damaging the habitats of bumblebees shall be consulted with an entomologist.
6. Actions associated with catching of amphibians and reptiles, their keeping and transferring from sites of regular presence to other sites, shall be done during their ground-based activity in a way avoiding injuring of caught specimens.
7. Catching of adult amphibians and reptiles shall be done manually, eventually with use of nets or a herpetological bucket; the animals shall be transported in high buckets laid with wet bedding, grass and leaves, with access to the air.
8. Catching of larvae forms shall be done using herpetological nets, and they shall be transported using buckets filled in with water taken from the place of catching.
9. Spawn shall be collected using small buckets; spawn shall be transported using containers filled in with water taken from the collection site.
10. All amphibians and reptiles caught within the planned investment site shall be moved to the closest sites indicated by environmental supervisors – distance of minimum 500 meters from the construction site, including current habitat needs determined in the application.
11. In order to disable the access to the construction site for the animals, the works shall be protected with herpetological fencing – along which herpetological supervision and potential catching of migrating specimens shall be provided – in neuralgic places on sites determined by the environmental supervision.
12. Prior to the commencement of works associated with damaging of habitats or mainstays, the area must be checked again for the occurrence of protected animal species and for inhabited bird nests or for bird hatches. The re-verification should be done by a person acting as the environmental inspector. If a hatch or a litter would be identified, the nests may be removed just after young specimens leave them.
13. Damaging of moles' habitats and hedgehogs' habitats shall be done under environmental supervision – in case of hedgehogs beyond the hibernation period, so the operations would not result in killing or injuring single specimens.
14. It is prohibited to damage daily shelters for common noctule, and especially those identified within the investment boundaries (in a lantern at Longinusa Podbipięty Street and in a tree at a reed field in the north-western part of the investment site) described in *Environmental Inventory for the Investment Site Related to the Construction of a pumping station for mobile pumps to drain the Lesisko complex*, as developed on October 28, 2019 by Mr. Marcin Pakuła, Mrs. Alicja Patej, and Mrs. Ewa Rypińska. The Applicant is simultaneously obliged to inform the contractors about those locations and to mark them and protect them against possible damaging. It is prohibited to plug or block slots or inlets to the aforementioned shelters. Trees to be logged shall be checked for the occurrence of bats in slots and hollows just prior to their removal.
15. In case of identifying on registered plots no. 142/2, 143/1 register area – Nowa Huta 0056, and no. 37, 38/2, 40/1, 41/4, 42/1, 318/2, 43/3, 230/7, 236/12, 242/5, 246/6, 247/5, 247/9, 260/4, 260/6, 285/1, 294/1, 317, 316, 33/30, 38/6, 39/2, 320/2, 42/7, 42/9, 44/2, 45/24, 45/20, 45/26, 46/18, 46/19, 52/3, 214/13, 214/15, 214/17, 222/6, 222/8, 223/5, 223/8, 225/14, 226/14, 227/12, 228/17, 228/21, 228/19, 231/3, 232/6, 238/4, 240/7, 241/3, 242/7, 243/7, 244/12, 244/14, 245/8, 246/12, 246/14, 247/13, 253/14, 254/10, 294/4, 310/2, 302/6, 302/8, 305/6, 252/8, 319/6, 343, 342, 133/13, 297/14, 260/5, 260/7, 282/5, 258/4, 282/15, 258/5, 234/2, 258/16, 282/14, 253/10, 252/2, 262/1, 322, 256 register area – Nowa

Huta 0058, Municipality of Cracow, District of Cracow, Małopolskie Province, other animal species under protection, e.g. fish, not listed under the provided application, the Regional Director for Environmental Protection shall be provided with a relevant application allowing for departure from bans related to determined species.

- III. I oblige the applicant to submit to the Regional Director for Environmental Protection in Cracow partial reports on the use of this permit by February 15 of each year the decision remains valid, and the final report by July 31, 2023, which will include e.g.: a description and dates of the activities carried out together with photographic documentation.

JUSTIFICATION

The State Water Holding Polish Waters with its registered office in Warsaw, 59A. Żelazna Street, represented by the Director of Regional Water Management Authority in Cracow, acting through the Proxy, Mr. Dariusz Adamek (AECOM Polska Sp. z o.o. – based upon the power of attorney dated January 12, 2021, ref.: KR.ROO.0121.4.2021.PP), applied on January 19, 2021 (reception date: January 19, 2021) and supplemented the application on January 22, 2021, to the Regional Director for Environmental Protection in Cracow for intentional catching, destruction of habitats or mainstays remaining breeding sites, raising sites for offspring, resting sites, migration or feeding areas, and for intentional transfer from sites of regular occurrence to other sites in case of about 150 specimens of Roman snail (*Helix pomatia*); destruction of habitats or mainstays remaining breeding sites, raising sites for offspring, resting sites, migration or feeding areas for about 20 specimens of buff-tailed bumblebee (*Bombus terrestris*); intentional catching, destruction of habitats or mainstays remaining breeding sites, raising sites for offspring, resting sites, migration or feeding areas, and for intentional transfer from sites of regular occurrence to other sites in case of amphibians and reptiles belonging to the following species: common toad (*Bufo bufo*) – about 50 specimens, European green toad (*Pseudepidalea viridis*) – about 10 specimens, edible frog (*Pelophylax esculentus*) – about 130 specimens, pool frog (*Pelophylax lessonae*) – about 45 specimens, common frog (*Rana temporaria*) – about 10 specimens, common newt (*Lissotriton vulgaris*) – about 5 specimens, sand lizard (*Lacerta agilis*) – about 15 specimens, and grass snake (*Natrix natrix*) – about 5 specimens; destruction of habitats or mainstays remaining breeding sites, raising sites for offspring, resting sites, migration or feeding areas for the following species of birds: common whitethroat (*Sylvia communis*) – 1 pair, grey heron (*Ardea cinerea*) – 2 pairs, red-backed shrike (*Lanius collurio*) – 2 pairs, Eurasian blackcap (*Sylvia atricapilla*) – 3 pairs, common cuckoo (*Cuculus canorus*) – 1 pair, fieldfare (*Turdus pilaris*) – 2 pairs, European nightjar (*Caprimulgus europaeus*) – 2 pairs, Eurasian blue tit (*Cyanistes caeruleus*) – 4 pairs, common chiffchaff (*Phylloscopus collybita*) – 4 pairs, white wagtail (*Motacilla alba*) – 2 pairs, common nightingale (*Luscinia megarhynchos*) – 2 pairs, river warbler (*Locustella fluviatilis*) – 1 pair, common starling (*Sturnus vulgaris*) – 6 pairs, song thrush (*Turdus philomelos*) – 2 pairs, yellowhammer (*Emberiza citrinella*) – 6 pairs, golden oriole (*Oriolus oriolus*) – 1 pair, and common chaffinch (*Fringilla coelebs*) – 4 pairs; intentional scaring or disturbing of one family of beavers (*Castor fiber*); destruction of habitats or refuges, which are the sites of breeding, rearing the young individuals, migration or feeding for about 5 common moles (*Talpa europaea*) and 2 hedgehogs of unidentified species (*Erinaceus sp.*); as well as destruction of habitats or refuges, which are the sites of breeding, rearing the young individuals, migration or feeding for bats belonging to the following species: common noctule (*Nyctalus noctula*) – about 25 specimens, soprano pipistrelle (*Pipistrellus*

pygmaeus) – about 10 specimens, and Daubenton's bat (*Myotis daubentonii*) – about 5 specimens. Precise number of animals covered by the permit cannot be determined on that stage, and it shall be informed in the final report.

The actions shall be done on registered plots no. 142/2, 143/1 register area – Nowa Huta 0056, and no. 37, 38/2, 40/1, 41/4, 42/1, 318/2, 43/3, 230/7, 236/12, 242/5, 246/6, 247/5, 247/9, 260/4, 260/6, 285/1, 294/1, 317, 316, 33/30, 38/6, 39/2, 320/2, 42/7, 42/9, 44/2, 45/24, 45/20, 45/26, 46/18, 46/19, 52/3, 214/13, 214/15, 214/17, 222/6, 222/8, 223/5, 223/8, 225/14, 226/14, 227/12, 228/17, 228/21, 228/19, 231/3, 232/6, 238/4, 240/7, 241/3, 242/7, 243/7, 244/12, 244/14, 245/8, 246/12, 246/14, 247/13, 253/14, 254/10, 294/4, 310/2, 302/6, 302/8, 305/6, 252/8, 319/6, 343, 342, 133/13, 297/14, 260/5, 260/7, 282/5, 258/4, 282/15, 258/5, 234/2, 258/16, 282/14, 253/10, 252/2, 262/1, 322, 256 register area – Nowa Huta 0058, Municipality of Cracow, District of Cracow, Małopolskie Province, in connection with the task “*Construction of a pumping station for mobile pumps to drain the Lesisko complex*” to be implemented within the Odra-Vistula Flood Management Project under the contract titled: “*Works Contract 3A.6 Construction of a pumping station for mobile pumps to drain the Lesisko complex*”.

The application was accompanied by *Environmental Inventory for the Investment Site Related to the Construction of a pumping station for mobile pumps to drain the Lesisko complex*, as developed on October 28, 2019 by Mr. Marcin Pakuła, Mrs. Alicja Patej, and Mrs. Ewa Rypińska, and by the Decision of the Regional Director for Environmental Protection in Cracow dated July 27, 2020 (ref. no.: OO.420.4.4.2019.BM) establishing environmental conditions for the investment titled: “*Construction of a pumping station for mobile pumps to drain the Lesisko complex*”, as well as the Decision of the Regional Director for Environmental Protection in Cracow dated August 6, 2020 (ref. no.: OO.4220.5.31.2020.BM) correcting ex officio a mistake in the Decision of the Regional Director for Environmental Protection in Cracow dated July 27, 2020 (ref. no.: OO.420.4.4.2019.BM).

European green toad, common whitethroat, red-backed shrike, Eurasian blackcap, common cuckoo, fieldfare, European nightjar, Eurasian blue tit, common chiffchaff, white wagtail, common nightingale, river warbler, common starling, song thrush, yellowhammer, golden oriole, common chaffinch, common noctule, soprano pipistrelle, and Daubenton's bat are under strict protection based upon Appendix no. 1 to the Regulation of the Minister of Environment of December 16, 2016 on the protection of animal species; whereas Roman snail, buff-tailed bumblebee, common toad, edible frog, pool frog, common frog, common newt, sand lizard, grass snake, common whitethroat, Eurasian beaver, common mole, and both species of hedgehogs are under partial protection (Appendix no. 2).

In case of the aforementioned animal species bans set out in Article 6 (1) items 2, 7, and 12 of that regulation, i.e. intentional catching, destruction of habitats or refuges, which are the sites of breeding, rearing the young individuals, resting or feeding, as well as a ban to intentionally transfer from sites of regular occurrence to other sites, are binding.

In accordance with Article 56 (2) items 1 and 2 and (4) item 3 and 6 of the Act of April 16, 2004 on nature protection, the regional director for environmental protection, in the absence of alternative solutions, may allow derogations from the prohibitions applicable to protected animal species if they are not detrimental to the conservation of their wild populations in the appropriate condition and if

they are in the interest of public health or safety, and in case of species under strict protection, species of birds and species listed under Appendix IV of the Council Directive 92/43/EEC of May 21, 1992 on the conservation of natural habitats and of wild fauna and flora – those result from necessary requirements of overriding public interest, including social or economic interests or requirements associated with favorable effects of basic significance for the environment.

While analyzing the information established in the course of the proceedings, it should be stated that in this case there are no alternative solutions, because the modernization of the existing system of protection against flood waters within the area of Lesisko Estate in Cracow requires cutting down the trees and shrubs colliding with the investment and redevelopment of ditches and extension of the existing flowage's bowl. Additionally, the existing reinforced-concrete abutments of the embankment lock shall be demolished and an overhead telecommunication line shall be redeveloped. Those actions may be done only with mechanical equipment, which shall cause partial damage to the habitat within the construction site.

However, these measures will not be harmful to keeping wild populations of protected animal species mentioned in the application in proper protection condition. Applying environmental supervision for the measures referring to Roman snails, amphibians and reptiles shall secure transferring their specimens from the investment site to replacement habitats with proper biological conditions, and in case of the birds – it shall allow for protection of potential young specimens. Consultations with the entomologist-naturalist experienced in biology of insects shall allow for minimizing a risk of killing representatives of that group of animals during damaging of their habitats.

The population of beavers in the country, as well as in a local range, i.e. in Małopolskie Province, is quite numerous and stable, which is proved by site observations and valid data on the number and range of occurrence (Atlas of Polish Mammals, <https://www.iop.krakow.pl/Ssaki/gatunek/61>). Those actions do not aim at elimination of specimens of the listed protected species. Beavers shall only be scared due to the construction works in progress. The animals affected by works will surely move to another location with similar parameters, placed in a small distance. After completing the works they will be able to return to their previous place of living.

In case of bats, and especially common noctule, it is prohibited to damage daily shelters identified within the investment boundaries (in a lantern at Longinusa Podbipięty Street and in a tree at a reed field in the north-western part of the investment site). The Applicant has simultaneously been obliged to inform the contractors about those shelters – in order to minimize the possibility of scaring and disturbing the bats – and to mark them clearly for the purpose of improving the protection for those places against possible damaging.

While observing the rule of caution and the possibility of occurrence of other animals under protection subsequently within the investment site, e.g. fish, the investor shall be obliged to apply with an additional request for departure from bans related to protected species, if such would be observed by the environmental inspectors.

Replacement planting of trees and shrubs shall be done as a measure mitigating and reducing the range of damage to the habitats or mainstays, in conformity with the decision of RDOŚ in Cracow dated July 27, 2020, ref. no.: OO.420.4.4.2019.BM. Only native species – proper for the sites covered

by the permit – shall be applied for the purpose of replacement planting, what would allow for spontaneous reinstatement of animal habitats listed under the application after completing the investment.

The aim of the investment is to reduce flood damage and the threat to human life. It is financed by the loan of the International Bank for Reconstruction and Development and by the loan of the Council of Europe Development Bank under the: *ODRA-VISTULA FLOOD MANAGEMENT PROJECT*. The proposed activities are undoubtedly in the interest of public health and safety and result from the necessary requirements of overriding public interest, including requirements of social and economic nature, which meets the conditions set out in Article 56 (4) items 3 and 6 of the Act on nature protection.

The obligation to submit information on the use of this permit results from Article 56 (7) of the Act of April 16, 2004 on nature protection.

In view of the foregoing, it has been decided as in the conclusion of the Decision.

INSTRUCTION

This decision may be appealed against to the General Director for Environmental Protection in Warsaw (52/54. Wawelska Street, 00-922 Warsaw), within 14 days from the date of its receipt, through the Regional Director for Environmental Protection in Cracow (25. Mogilska Street, 31-542 Cracow).

Pursuant to Article 127a (1) and (2) of the Act of June 14, 1960, Code of Administrative Procedure, a party may, within the time limit for lodging an appeal, waive the right to lodge an appeal against the decision of the public administration body which issued the decision. The decision becomes final and binding on the day of delivering a statement waiving the right to appeal by the last of the parties to the proceedings to the public administration body.

This decision pursuant to Article 130 (4) of the Code of Administrative Procedure shall be enforceable before the expiry of the time limit for appeal if it complies with the request of all parties or if all parties have waived their right to appeal.

The Regional Director for Environmental Protection in Cracow may inspect the Applicant's compliance with the conditions set out herein, as well as withdraw the permit if the conditions are not met (Article 56 (7a) and (7j) of the Act on nature protection).

**Per procuration by the Regional Director
for Environmental Protection in Cracow**

**Małgorzata Mordarska-Duda, MSc
Deputy Regional Director
Regional Conservator of Nature
/electronic signature/**

A stamp duty of PLN 82.00 (say: eighty-two zloty 00/100) was collected pursuant to Article 7 of the Act of November 16, 2006 on stamp duty (consolidated text: Journal of Laws of 2020, item 2023, as amended).

Recipients:

1. Applicant.
2. OP-I file.