

Our reference: GGRiOŚ.6220.5.2021

## DECISION

In accordance with the Act of 3 October 2008 on providing information *on environment and its protection, public participation in environmental protection and on environmental impact assessments* (Journal of Laws of 2021, item 247, as amended) - hereinafter referred to as the EIA Act, in conjunction with Article 155 of the Act of 14 June 1960 - *Code of Administrative Procedure* (Journal of Laws of 2021, item 735) - hereinafter referred to as the Code of Administrative Procedure, after examining into the application of 30 March 2021 (date of receipt at the Authority: 31 March 2021) of the State Water Holding Polish Waters, 59A Żelazna Street, 00-848 Warsaw, acting through its organisational unit: the State Water Holding Polish Waters - the Regional Water Management Authority - the Regional Water Management Authority in Wrocław, 34 Norwida Street, 50-950 Wrocław, on behalf of which acts the representative: Mr Damian Nowakowski

### I amend

the decision on environmental conditions of the Mayor of Czerwieńsk of 18 July 2011, reference no.: GGRiOŚ 7627-11/39/10/11 for the undertaking entitled: "**Construction and detailed design of the rebuilding the control structures of the Odra River - adjusting it to the class III waterway**" by:

1. Deleting paragraph II.6 reading: "*in order to eliminate the threat of disturbing the functioning of the Natura 2000 site PLB080004 "Middle Odra Valley", construction and hydrotechnical works should be carried out outside the period from 1 March to 31 August*".
2. The remaining provisions of the decision remain unaltered.

## JUSTIFICATION

The State Water Holding Polish Waters, 59A Żelazna Street, 00-848 Warsaw, acting through its organisational unit: the State Water Holding the Regional Water Management Authority in Wrocław, 34 Norwida Street, 50-950 Wrocław, for and on behalf of which acts the representative: Mr Damian Nowakowski, has submitted an application of 30 March 2021 (date of receipt: 31 March 2021) to the Mayor of Czerwieńsk for amending the decision on environmental conditions of 18 July 2011, ref. no.: GGRiOŚ 7627-11/39/10/11 for the undertaking entitled: "Construction and detailed design of the rebuilding the control structures of the Odra River - adjusting it to the class III waterway". The application was accompanied by a power of attorney to act on behalf of the investor

and an annex – the updates of the environmental impact report of the rebuilding the control structures of the Odra River for avifauna, prepared in March 2021 by Pracownia Analiz Przyrodniczych Tomasz Radniecki, 12 Jaspisowa St., 61-680 Poznań, a team led by Mr Tomasz Radniecki.

Pursuant to Article 87 of the EIA Act, "The provisions of this section (i.e. section V) and section VI apply accordingly in the case of amending the decision on environmental conditions. The provision of Article 155 of the Code of Administrative Procedure shall apply accordingly with the reservation that consent is given only by the party which applied for issuing the decision on environmental conditions or the entity to which the decision on environmental conditions was transferred."

In turn, Article 155 of the Code of Administrative Procedure provides that a final decision, by virtue of which a party has acquired a right, may be repealed or amended at any time with the consent of the party by the public administration body which issued it, if specific provisions do not preclude the repealing of or amendment of such a decision and it is supported by the public interest or a legitimate interest of the party.

All the above-mentioned conditions are fulfilled in the present case. The decision on environmental conditions of the Mayor of Czerwieńsk of 18 July 2011, ref. no.: GGRiOŚ 7627-11/39/10/11, is final. Moreover, the amendment of the decision is justified by the party's interest. There are also no specific provisions against amending the decision. On the contrary, Article 87 of the EIA Act allows changes to the decision on environmental conditions. Thus, it should be concluded that the prerequisites for amending the decision on environmental conditions for the project in question are fulfilled.

Since the number of parties to the proceedings exceeds 10 parties, pursuant to Article 74(3) of the EIA Act, the provision of Article 49 of the Code of Administrative Procedure applies, which stipulates that the parties may be notified of the decisions and other activities of the authority in the form of a public announcement, in another form of a public notice customarily accepted in a given locality or by making the letter available in the Public Information Bulletin on the website of the competent public administration body.

In consideration of the above, the parties to the proceedings were notified of the initiation of the proceedings and the collection of complete evidence in the case, as well as of their rights, by an announcement issued by the Mayor of Czerwieńsk on 13 April 2021. The announcement was published in the Public Information Bulletin at the website [bip.czerwiensk.pl](http://bip.czerwiensk.pl) on 14 April 2021 and on the notice board of the Town and Commune Office in Czerwieńsk.

No parties to the proceedings made any submissions or comments on the case within the specified time limit.

In addition, the Mayor of Czerwieńsk, in a letter ref. no. GGRiOŚ.6220.5.2021 of 13 April 2021, applied to the Regional Director for Environmental Protection in Gorzów Wlkp. for approving the conditions for amending the final decision of the Mayor of Czerwieńsk on environmental conditions for the aforementioned undertaking, of 18 July 2011, ref. no.: 7627-11/39/10/11 in the scope of the provision in par. II.6.

At the same time, in a letter of 13 April 2021, ref. no. GGRiOŚ.6220.5.2021, as the project exceeds the area of one commune only and covers two provinces: Lower Silesian Province and Lubuskie Province, the Mayor of Czerwieńsk, pursuant to Article 75(4) and

Article 75(5b) of the Act of 3 October 2008 *on the provision of information on the environment and its protection, public participation in environmental protection and on environmental impact assessments* (consolidated text: Journal of Laws of 2021, item 247, as amended) has requested an opinion on the planned amendment of the final decision on environmental conditions of 18 July 2011, ref. no. 7627-11/39/10/11 for the project entitled: "Construction and detailed design of the rebuilding the control structures of the Odra River - adjusting it to the class III waterway", within the scope of the provision included in par. II.6, to eighteen Heads of Villages and Mayors being the parties to the administrative proceedings. The Mayor of Czerwieńsk informed the parties in the above-mentioned letter that in accordance with Article 75(5b) of the EIA act, the opinion on the matter in question is issued by way of a decision within 30 days from the date of receiving an application for issuing the opinion. Failure to give an opinion within this time limit shall be treated as a failure to raise objections to the application.

The Mayor of Czerwieńsk, in letter ref. no.: GGRiOŚ.6220.5.2021 of 13 April 2021, requested the parties to the proceedings to publish the Announcement - making it public by positing it for 14 days in the Public Information Bulletin of the Office or as customarily accepted (posting it on the notice board of the Office). At the same time it was requested that the announcement is returned to the Office with a note confirming the posting period.

All the parties have confirmed in return that they had made the above-mentioned announcement public by posting it in the Office's Public Information Bulletin or as customarily accepted (posting it on the notice board of the Office).

No parties to the proceedings made any submissions or comments on the case within the specified time limit.

The Mayor of the Commune of Trzebiechów, the Mayor of the Commune of Jemielno, the Mayor of the City of Głogów, the Mayor of Krosno Odrzańskie, the Mayor of the Commune of Bojadła, the Mayor of the Commune of Głogów, the Mayor of Środa Śląska and the Mayor of the City of Zielona Góra have issued positive opinions by way of a decision on amending paragraph II.6 of the decision on environmental conditions of the Mayor of Czerwieńsk of 18 July 2011, ref. no.: GGRiOŚ 7627-11/39/10/11.

On 19 May 2021, the Office received a decision from the Regional Director for Environmental Protection in Gorzów Wlkp., ref. no.: WZŚ.4221.86.2021.AN of 18 May 2021, in which the Regional Director for Environmental Protection agreed to amend the conditions for the execution of the above-mentioned project by deleting par. II.6 in the decision on environmental conditions of the Mayor of Czerwieńsk of 18 July 2011, ref. no.: GGRiOŚ 7627-11/39/10/11 to read: "in order to eliminate the threat of disturbing the functioning of the Natura 2000 site PLB080004 "Middle Odra Valley", construction and hydrotechnical works should be carried out outside the period from 1 March to 31 August", thus allowing further construction and hydrotechnical works to be carried out in the birds' breeding period.

The Regional Director for Environmental Protection in Gorzów Wlkp. stated that the implementation of the investment in question is not associated with the possibility of initiating threats or increasing their intensity, because it concerns works related to the

construction of groins on the Odra River without interference in the habitat parameters of species. Taking into consideration new facts presented in the report update, the Regional Director for Environmental Protection has agreed to consider that the further execution of construction works will not have a significant negative impact on avifauna of the area, hence the execution can be continued according to the updated report.

The Mayor of Czerwieńsk - by a notice with ref. no. GRiOŚ.6220.5.2021 of 07 June 2021, notified the parties to the proceedings of the decision of the Regional Director for Environmental Protection in Gorzów Wlkp. ref. no.: WZŚ.4221.86.2021.AN of 18 May 2021 agreeing to amend the conditions for the execution of the above-mentioned project by deleting par. II.6 in the decision on environmental conditions of the Mayor of Czerwieńsk of 18 July 2011, ref. no.: GGRiOŚ 7627-11/39/10/11 and about the possibility to familiarise oneself with the evidence and materials collected and the submitted claims before this decision is issued.

The announcement was published in the Public Information Bulletin at the website [bip.czerwiensk.pl](http://bip.czerwiensk.pl) on 10 June 2021 and posted on 08 June 2021 on the notice board of the Commune and Town Office in Czerwieńsk. No parties to the proceedings made any submissions or comments on the case within the specified time limit.

The Mayor of Czerwieńsk, in a letter ref. no.: GGRiOŚ.6220.5.2021 of 07 June 2021, requested the parties to the proceedings to publish the Announcement of 07 June 2021 - making it public by posting it for 14 days in the Public Information Bulletin of the Office or as customarily accepted (posting it on the notice board of the Office). At the same time, it was requested that the announcement is returned to the Office with a note confirming the posting period.

All the parties have confirmed in return that they had made the above-mentioned announcement public by posting it in the Office's Public Information Bulletin or as customarily accepted (posting it on the notice board of the Office). No parties to the proceedings made any submissions or comments on the case within the specified time limit.

The data on the application for amending the decision on environmental conditions for the project and the submitted documentation were entered into the publicly available data register, maintained pursuant to Article 22(1) of the EIA Act.

The Update of the environmental impact report for rebuilding the control structures of the Odra River for avifauna, submitted to the application for amending the decision in question, contains an assessment of the possible impact of the investment at its current stage of implementation in light of the presented new facts coming from the natural inventory, which was conducted in the Odra River valley at the section of Nowa Sól to the estuary of the Nysa Łużycka River during the vegetation season in 2017 from March to September. The said analysis was based on the results of an inventory which covered the riverbed with adjacent areas, in a strip of about 200-300 m on both sides of the bank slopes in the areas of and in the surrounding of the planned works (based on materials contained in the study: "1B. 1/1(b) A multi-option technical concept of renovation and modernisation of the free-flowing Odra river control structures in order to adapt the section of the Odra from Malczyce to Ścinawa to the class III waterway". The results of the nature inventory, together with other natural data for the section of the Odra River between Ścinawa and the mouth of the Nysa

Łużycka, were the starting point for assessing the impact of Task 1B. 1/1 (b) on protected areas and populations of protected species of plants and animals.

A detailed analysis of the Regional Director for Environmental Protection in Gorzów Wlkp., in particular of:

- documentation held, including the update of the report;
- order of the Regional Director for Environmental Protection in Gorzów Wlkp. and the Regional Director for Environmental Protection in Wrocław of 13 July 2017 on establishing a plan of protection tasks for the Natura 2000 site Middle Odra Valley PLB080004 (Journal of Laws of the Lubuskie Province of 2017, item 1642);
- Standard Data Form of the above-mentioned Natura 2000 site;
- the location situation available on the websites:  
<http://www.bdl.lasy.gov.pl/portals/mapy>; <http://geoserwis.gdos.gov.pl/mapy>;  
<http://mapy.geoportal.gov.pl/imap>; <http://mapa.korytarze.pl>;
- the environmental database of RDOŚ in Gorzów Wlkp.;
- the ecological conditions of maintaining the appropriate flow capacity of ecological corridors of the national and international rank, as well as a thorough analysis of direct and indirect impacts of the project, especially aspects related to its location, scale, type and characteristics, allows to conclude that the planned amendment to the decision on environmental conditions will not have a significant negative impact on maintaining the proper condition of protection of the objects of the Natura 2000 Bird Refuge Middle Odra Valley PLB080004, in particular the currently inventoried species of birds and their habitats, such as: A074 — Red Kite *Milvus milvus*, A073 — Black Kite *Milvus migrans*, A229 — Common Kingfisher *Alcedo atthis*.

It was essential in the decision in question to consider the following information by the Regional Director for Environmental Protection in Gorzów Wlkp.:

1. The content of the above-mentioned updated report, which includes the results of the 2017 avifauna survey, provides that:
  - "Majority of the bird species observed in the area of the works conducted do not directly use the groins or bank side areas for nesting. The exceptions are three species - Common Sandpiper, Little Ringed Plover and Common Kingfisher;
  - "Common Kingfisher was observed 7 times with only 3 sightings being within the distance of less than 50 m; these were the groins 0-15/454, 0-9/484 and 0-4/456";
  - "In the case of the species Red Kite *Milvus milvus* and Black Kite *Milvus migrans*, their breeding was not confirmed within the area, as well as in the surrounding of the project. The birds were seen when flying and hunting over and around the investment site, and the Red Kite was observed frequently, virtually during each field inspection." ... "Despite observing other species, including species very scarce at a domestic scale, such as Black Kite and Red Kite, the works should not cause a threat to others provided they are not carried out in a zone not less than 500 m from any identified nest of these birds."
2. The content of the Plan of protection tasks for the Natura 2000 site Middle Odra Valley stipulates that:

- the investment area in question may potentially constitute a feeding ground for Red Kite *Milvus milvus*, for which potential threats associated with the investment in question were indicated: 02.01 Land filling, land reclamation and drainage - general, J02.03 River channel regulation (straightening) and changing the river channel course, with the following description: "Threat related to potential deterioration of the quality of the species' breeding biotopes and feeding grounds as a result of anthropogenic hydrological disturbances of the area, resulting in its intensive drainage and dewatering, as well as the need to reduce forest cover."
- the investment area in question may potentially constitute breeding sites for Common Kingfisher *Alcedo atthis*, for which potential threats associated with the investment in question were indicated: J02.01 — Land filling, land reclamation and drainage - general, J02.03 River channel regulation (straightening) and changing the river channel course, with the following description: "Threat related to the potential disappearance or reduction of the species' habitats due to anthropogenic hydrological disturbances of the area, resulting in its intensive drainage and dewatering, as well as interference with slopes of river banks and oxbow lakes".

In consideration of the foregoing, it should be concluded that the implementation of the investment in question is not associated with the possibility of initiating the above-mentioned threats or increasing their intensity, because it pertains to the works related to the construction of groins on the Odra River without interference in the habitat parameters of species.

Taking into consideration the new facts presented in the above-mentioned report update, it should be considered that the further execution of construction works will not have a significant negative impact on avifauna of the area, hence the execution can be continued in the above-mentioned breeding season of birds. Moreover, as pointed out by the Regional Director for Environmental Protection in Gorzów Wlkp. in the decision of 18 May 2021, ref. no.: WZŚ.4221.86.2021.AN - it should be added that with reference to the proposal for minimising measures indicated in the said application and in the above-mentioned updated report, the conditions for the execution of the investment agreed with the Regional Director for Environmental Protection in Gorzów Wlkp. are listed in the decision on environmental decisions of the Mayor of Czerwieńsk of 18 July 2011, ref. no.: GGRiOŚ 7627-11/39/10/11 in sec. IV.

It is also worth adding that the content of the aforementioned report shows that apart from the conditions for the execution of the undertaking included in the decision on environmental conditions, the investor undertook to execute the construction works under an expert ornithologist's supervision.

For this reason, this decision does not duplicate the provisions regarding nature supervision (ornithologist expert's supervision) of the works conducted, as such an obligation already results from the provisions of par. IV of the decision on environmental conditions.

Taking into consideration the new facts presented in the submitted application for amending the said decision, in the report and the above findings, I conclude that the further execution of construction works will not have a significant negative impact on avifauna of the area, hence the execution can be continued in the above-mentioned breeding season of birds.

Pursuant to the wording of Article 87 of the EIA Act, the indicated provisions of the act apply "accordingly" in the case of amending the decision on environmental conditions. Appropriate enforcement means that that the authority chooses certain elements of the procedure which are appropriate to the specificities of the particular case.

Considering that we only deal with a change of the investment's execution condition regarding the protection of avifauna, the Mayor of Czerwieńsk has refrained from carrying out the procedure referred to in sections V and VI of the EIA Act, including obtaining opinions and agreements of the sanitary inspection authority and the authority competent to issue a legal water assessment, as well as from carrying out a procedure with the participation of the public.

In view of the foregoing and pursuant to the provisions referred to in the introduction, it has been decided as in the conclusion of the decision.

## NOTICE

The issued decision may be appealed against by the parties to the Self-Government Appeal Tribunal in Zielona Góra, through the intermediation of the Mayor of Czerwieńsk, within 14 days of the date of receipt.

Within the time limit for lodging an appeal, the party may waive the right to lodge an appeal against the decision of the public administration body who 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 administration body.

### **Recipients:**

1. Mr Damian Nowakowski  
Budimex S.A., 9 Siedmiogrodzka St., 01-204 Warsaw – representative of: the State Water Holding Polish Waters Regional Water Management Authority in Wrocław  
34 Norwida Street, 50-950 Wrocław,
2. the other parties to the proceedings as defined in Article 49 of the Code of Administrative Procedure
3. to files.

### **Copy to:**

1. The Regional Director for Environmental Protection in Gorzów Wlkp.  
13 Jagiellończyka Street  
66-400 Gorzów Wlkp.

MAYOR  
Piotr Iwanus

MPS

BURMISTRZ  
Piotr Iwanus