

*Regional Director
for Environmental Protection
in Wrocław
Al. Jana Matejki 6
50-333 Wrocław
WPN.6400.6.2019.MH*

Wrocław, March 5th, 2019

DECISION

Under Article 56 Par. 2 and Par. 4 Subpar. 6 and 7 in connection with Article 51 Par. 1 Subpar. 1, 3 and 10, Article 52 Par. 1 Subpar. 7, 12, 13 and 15 of *The Environmental Protection Act of April 16th, 2004 (Journal of Laws of 2015, item 1614 as amended)*, § 3 and § 6 Par. 1 Subpar. 1 and 3 of the *Regulation of the Minister of the Environment of October 9th, 2014 on protection of plant species (Journal of Laws, item 1409)*, § 2 and 3 and § 6 Par. 1 Subpar. 7 and 12 and Par. 2 and Par. 3 of the *Regulation of the Minister of the Environment of October 6th, 2014 on protection of animal species (Journal of Laws, item 1348)* and Article 104 and 155 of the *Law of 14 June 1960 – Code of Administrative Procedure (Journal of Laws of 2018, item 2096)*, after reviewing an application submitted by Mr. Marek Kłonica, who acts on behalf of the Director of the Regional Water Management Authority in Wrocław, ul. C.K. Norwida 34, 50-950 Wrocław (proxy of February 11th, 2019), ref. No.: 1913/POPDOW/WR/W/2019, of February 19th, 2019, concerning issuing a decision exempting from bans related to specimens of plants and animals covered by species protection, completed by the letter ref. No.: 1935/POPDOW/WR/W/2019 on February 25th, 2019 and the letter ref. No.: 1912/POPDOW/WR/W/2019 on February 19th, 2019 on overruling decision ref. No. WPN.6401.266.2015.IW.2 of January 8th, 2016 in connection with the Task 2A.1/1 Construction of “Boboszków”- a dry flood control reservoir on the Nysa Kłodzka River,

I. overrule

the decision of the Regional Director for Environmental Protection in Wrocław, ref. No.WPN.6401.266.2015.IW.2, of January 8th, 2016, which permits the destruction of specimens and habitats of protected plant species, the destruction of habitats of protected animal species and which permits purposeful scaring and disturbing as well as purposeful relocation from sites of regular presence to new places of protected species of animals, purposeful scaring and disturbance in resting sites during night, in breeding sites during breeding season, in nesting sites and on feeding grounds of migrating and wintering bird species in connection with the implementation of the investment entitled “Construction of “Boboszków” – a dry flood control reservoir on the Nysa Kłodzka River”

II. permit the following

in connection with the implementation of the investment entitled the Task 2A.1/1 Construction of “Boboszków” – a dry flood control reservoir on Nysa Kłodzka River:

1. purposeful destruction of specimens and habitats of the following protected plant species:

- A.** *Springy turf-moss Rhytidiadelphus squarrosus*, located on plots No. 59/1, 61/11, Boboszków precinct, with an estimated surface area of several hundred m²,
- B.** *Red-stemmed feathermoss Pleurozium schreberi*, located on plot No. 61/1, Boboszków precinct, with an estimated surface area of about a dozen m²,
- C.** *Broom Forkmoss Dicranum scoparium*, located on plot No. 393/2, Pisary precinct, with an estimated surface area of several dozen m²,

2. destruction of habitats of the following protected plant species:

- A.** *True oxlip Primula elatior*, located on plots No. 69 (two sites), 59/3, 61/12, 81/2, Boboszków precinct and on plot No. 293/1, Pisary precinct (178-600 specimens),
- B.** *Stemless carline thistle Carlina acaulis*, located on plots No. 59/3, 81/5, Boboszków precinct (12-55 specimens),
- C.** *Spring snowflake Leucoium vernum*, located on plot No. 70/3, Boboszków precinct (1001-10000 specimens),
- D.** *Autumn crocus Colchicum autumnale*, located on plot No. 61/11 , Boboszków precinct (101-250 specimens),
- E.** *Common twayblade Listera ovata*, located on plot No. 69, Boboszków precinct (1-5 specimens),
- F.** *Mezereon Daphne mezereum*, located on plot No. 293/1, Pisary precinct (1-5 specimens),

3. destruction of habitats of the following protected animal species:

- A.** *Large copper Lycaena dispar*, *Dusky large blue Maculinea nausithous* and *Scarce large blue Maculinea teleius*, located on plot No. 66/1, Boboszków precinct, with an estimated surface area of 0.4 ha, **on the condition** that a 0.2 m thick layer of fertile soil (topsoil) shall be removed and appropriately protected before commencing the construction works and reused after works completion to create a fertile layer in another location within the implementation range of the planned undertaking,
- B.** *Bullhead Cottus gobio* and *Siberian bullhead Cottus poecilopus*, located on plot No. 69, Boboszków precinct (the Nysa Kłodzka river bed on an approx. 500 m long section), **on the condition** that all works in the river bed shall be performed beyond the period from March 1st to May 31st and shall be maximally reduced in the period from September 1st to the end of February,
- C.** *Greater mouse-eared bat Myotis myotis*, *Natterer's bat Myotis nattereri*, *Daubenton's bat Myotis daubentonii*, *Serotine bat Eptesicus serotinus*, *Northern bat Eptesicus nilssonii* and *Barbastelle Barbastella barbastellus*, located: in tree stands on plots No. 63, 65/1, 65/2, 68/3, 68/4, 69, 70/3, 70/4, 81/5, 81/2, 81/7, 81/8, 216, Boboszków precinct; in buildings anticipated for demolition located on plots No. 59/1, 59/3, 59/4, 81/2, 61/4, 61/11, 61/12, 63, Boboszków precinct; and on plot No. 306/2 , Pisary precinct, **on the following conditions:**
 - a) removal of the trees and demolition of the buildings constituting bat habitats and refuges shall be

performed under the supervision of an expert chiropterologist,

- b) as part of the compensation for bat habitat destruction, 42 nesting boxes for bats shall be hung as follows: in 7 groups of 6 boxes each, with 3 Issel model boxes and 3 Stratmann model boxes in each group, in locations previously determined together with an expert chiropterologist,
4. **destruction of habitats, purposeful scaring and disturbing and purposeful relocation from places of regular presence to new places of the following protected animal species:** Eurasian otter *Lutra lutra*, Hedgehog *Erinaceus sp.*, Alpine shrew *Sorex alpinus*, Common shrew *Sorex araneus*, Pygmy shrew *Sorex minutus*, Mediterranean water shrew *Neomys anomalus*, Eurasian water shrew *Neomys fodiens* and Lesser white-toothed shrew *Crocidura suaveolens*, located in the Nysa Kłodzka River Valley in the area of the designed undertaking, **on the condition that** the works shall be performed under the supervision of an expert mammalogist and if adult specimens or growth forms of the abovementioned species are spotted, they shall be transferred to an appropriate location in terms of habitat.
5. **destruction of habitats and purposeful scaring and disturbing in places of night rest, in places of reproduction or growth of the young during the breeding period and on feeding grounds of groups of migrating or wintering birds:** Red-backed shrike *Lanis collurio*, Common buzzard *Buteo buteo*, Sparrowhawk *Accipiter nisus*, Eurasian wren *Troglodytes troglodytes*, Dunnock *Prunella modularis*, European robin *Erithacus rubecula*, Song thrush *Turdus philomelos*, Mistle thrush *Turdus viscivorus*, Fieldfare *Turdus pilaris*, Common blackbird *Turdus merula*, Garden warbler *Sylvia borin*, Eurasian blackcap *Sylvia atricapilla*, Tree pipit *Anthus trivialis*, Long-tailed tit *Aegithalos caudatus*, Eurasian nuthatch *Sitta europaea*, Eurasian treecreeper *Certhia familiaris* and Eurasian golden oriole *Oriolus oriolus*, spotted within the boundaries of plots No. 61/1, 69, 81/7, 81/8, 77, 63, 65/1, 65/2, 61/4, 61/11, 61/12, 64, 66/1, 67, 61/2, 81/2, 81/6, 81/5, 62/1, 62/2, 59/1, 59/3, 59/4, 53, 60, 32, 70/3, 70/4, 68/3, 68/4, 68/2, 216, 78/1, 78/2 and 80, Boboszków precinct and 296/1, 296/2, 295/1, 295/2, 299/1, 299/2, 292/4, 292/5, 292/6, 293/1, 293/2, 294, 298, 306/8, 306/2, 306/3, 306/10, 306/11, Pisary precinct, **on the condition** that the construction works concerning the construction of the reservoir dam with relief devices shall begin before the breeding season of the birds, i.e. in the period from August 15th to March 1st,
6. **purposeful scaring and disturbing in places of night rest, in places of reproduction or growth of the young during the breeding period and on feeding grounds of groups of migrating or wintering birds:** Black stork *Ciconia nigra*, Black woodpecker *Dryocopus martius*, European honey buzzard *Pernis apivorus* and Kingfisher *Alcedo atthis*, spotted i.a. within the boundaries of plots No. 66/3, 66/2, 33/1, 33/2, 58/1, 58/3, 58/4, 61/7, 61/8, 61/9, 61/10, 69, 81/7, 81/8, 77, 63, 65/1, 65/2, 61/4, 61/11, 61/12, 64, 66/1, 67, 61/2, 81/2, 81/6, 81/5, 59/1, 59/3, 59/4, 62/1, 62/2, 62/3, 53, 60, 32, 70/3, 70/4, 68/3, 68/4, 68/2, 216, 78/1 and 80, Boboszków precinct and 296/1, 296/2, 295/1, 295/2, 306/8, 299/1, 292/2, 292/4, 292/5, 292/6, 293/1, 293/2, 294, 298, 306/8, 306/2, 306/3, 306/10, 306/11 and 46, Pisary precinct, **on the following conditions:**
- a) the construction works concerning the construction of the reservoir dam with relief devices shall begin before the breeding season of birds, i.e. in the period from August 15th to March 1st, while the

remaining earthworks shall be performed in the period from August 15th to March 15th,

- b) no construction works or tree and shrub removal shall be performed within the distance of up to 100 m from the nest of Black stork *Ciconia nigra* located in the south-western part of the designed reservoir basin and in the period from March 15th to August 31st the abovementioned activities shall not be performed within the distance of 100 to 500 m.

III. The permit is valid to May 1st, 2021.

Information about the scope of utilizing this permit shall be submitted to the Regional Director for Environmental Protection in Wrocław till January 15th after every calendar year of the permit term, with a reservation that **the last information shall be submitted until May 15th, 2021.**

JUSTIFICATION

On February 19th, 2019, the Regional Directorate for Environmental Protection in Wrocław received an application by Mr. Marek Kłonica, who acts on the behalf of the Regional Water Management Authority in Wrocław, ul. C.K. Norwida 34, 50-950 Wrocław, ref. No.: 1913/POPDOW/WR/W/2019 of February 19th, 2019, concerning issuing a decision exempting from bans related to specimens of plants and animals covered by protection (completed by the letter ref. No.: 1913/POPDOW/WR/W/2019 on February 25th, 2019) and ref. No.: 1912/POPDOW/WR/W/2019 on February 19th, 2019) in connection with the implementation of the investment entitled: the Task 2A.1/1 “Construction of “Boboszów” – a dry flood control reservoir on Nysa Kłodzka River”.

Via letter ref. No. WPN.6401.266.2015.IW.2 of January 8th, 2016 (valid until June 30th, 2020), the present body permitted exemptions from bans related to specimens of plants and animals covered by species protection in connection with the implementation of the investment entitled: “Construction of “Boboszów” – a dry flood control reservoir on Nysa Kłodzka River”.

Under Article 155 of the Law of 14 June 1960 – *Code of Administrative Procedure*, a final decision under which a party acquired a right may be overruled or changed any time by the public administration body that issued it provided that special provisions do not oppose the overruling or changing of such decision and it is supported by a social interest or a legitimate interest of the party.

Taking into account the request contained in the application No.: 1912/POPDOW/WR/W/2019 of February 19th, 2019 which concerns overruling the decision in question and issuing a new decision covering the scope of the activities the performance of which is applied for, given that this scope complies with the decision of the Regional Director for Environmental Protection in Wrocław establishing the environmental conditions for the undertaking entitled: “Construction of “Boboszów” – a dry flood control reservoir on Nysa Kłodzka River” (ref. No.: WOŚ.4233.8.2012.ŁCK.47, of February 27th, 2015 and amended decision by the General Director for Environmental Protection, re. No.: DOŚ-oa1.4233.21.2015.is.15 of April 6th, 2016), the decision of January 8th, 2016 is hereby overruled.

Springy turf-moss *Rhytidiadelphus squarrosus*, Red-stemmed feathermoss *Pleurozium schreberi*, Broom Forkmoss *Dicranum scoparium*, Spring snowflake *Leucoium vernum*, True oxlip *Primula elatior*, Common twayblade *Listera ovata*, Mezereon *Daphne mezereum*, Autumn crocus *Colchicum autumnale* and

Stemless carline thistle *Carlina acaulis* are species subject to partial protection, listed in respective items No. 38, 42, 164, 181, 231, 249, 270, 296 and 297 of Annex No. 2 to the *Regulation of the Minister of the Environment on protection of plant species*.

Barbastelle *Barbastella barbastellus*, Northern bat *Eptesicus nilssonii*, Serotine bat *Eptesicus serotinus*, Daubenton's bat *Myotis daubentonii*, Greater mouse-eared bat *Myotis myotis*, Natterer's bat *Myotis nattereri*, Black stork *Ciconia nigra*, European honey buzzard *Pernis apivorus*, Sparrowhawk *Accipiter nisus*, Common buzzard *Buteo buteo*, Black woodpecker *Dryocopus martius*, Kingfisher *Alcedo atthis* Eurasian golden oriole *Oriolus oriolus*, Red-backed shrike *Lanius collurio*, Dunnock *Prunella modularis*, Tree pipit *Anthus trivialis*, Long-tailed tit *Aegithalos caudatus*, Eurasian blackcap *Sylvia atricapilla*, Garden warbler *Sylvia borin*, Eurasian treecreeper *Certhia familiaris*, Eurasian nuthatch *Sitta europaea*, Eurasian wren *Troglodytes troglodytes*, European robin *Erithacus rubecula*, Mistle thrush *Turdus viscivorus*, Song thrush *Turdus philomelos* Common blackbird *Turdus merula*, , Fieldfare *Turdus pilaris*, Large copper *Lycaena dispar*, Dusky large blue *Maculinea nausithous* and Scarce large blue **Maculinea teleius** are animal species subject to strict protection, listed in respective items No. 16, 17, 18, 24, 26, 28, 228, 247, 264, 271, 290, 299, 311, 312, 327, 332, 425, 426, 427, 436, 438, 440, 445, 468, 469, 471, 473, 564, 567, 568 of Annex No. 1 to the *Regulation of the Minister of the Environment on protection of animal species*.

Eurasian otter *Lutra lutra*, Hedgehog *Erinaceus sp.*, Common shrew *Sorex araneus*, Pygmy shrew *Sorex minutus*, Alpine shrew *Sorex alpinus*, Eurasian water shrew *Neomys fodiens*, Mediterranean water shrew *Neomys anomalus*, Lesser white-toothed shrew *Crocidura suaveolens*, Bullhead *Cottus gobio* and Siberian bullhead *Cottus poecilopus* are species subject to partial protection, listed in respective items No. 3, 4, 5, 14, 16, 17, 18, 19, 21, 65, 66 of Annex No. 2 to the *Regulation of the Minister of the Environment on protection of animal species*.

Under Article 51 Par. 1 Subpar. 1, 3 of the *Environmental Protection Act* and § 6 Par. 1 Subpar. 1 and 3 of the *Regulation on protection of plant species*, certain bans are related to wild plants subject to species protection, i.a. bans on destruction of specimens, habitats and sanctuaries and bans on purposeful relocation in the natural environment.

Under Article 52 Par. 1 Subpar. 7, 12, 13 and 15 of the *Environmental Protection Act* and § 6 Par. 1 Subpar. 7 and 12 and Par. 2 and 3 of the *Regulation of the Minister on protection of animal species*, certain bans are related to wild animals subject to species protection, i.a. bans on destruction of habitats and sanctuaries, which are their breeding, nesting, resting, migrating or feeding sites, bans on purposeful scaring and disturbing of animals (related to wild animals marked with the symbol (1) in Annex no. 1 and 2 of the above-mentioned *Regulation*), bans on purposeful scaring or disturbing in places of night rest, in places of reproduction or growth of the young during the breeding period and on feeding grounds of groups of migrating or wintering animals (related to wild animals marked with the symbol (2) in Annex no 1 and 2 of the above-mentioned *Regulation*) and bans on purposeful relocation of animals from the places of regular presence to the new ones.

Under Article 56 Par. 2 and Par. 4 Subpar. 6 and 7 of the *Environmental Protection Act*, a regional director for environmental protection may permit i.a. activities covered by the bans in relation to wild plant and animal species subject to species protection provided that there are no alternative solutions and the activities do not have an adverse impact on the preservation of wild populations of protected plant and animal species in an appropriate status and stem from the necessary requirements of an overriding public interest, including the

requirements of social or economic nature.

Taking into account the lack of alternative solutions and the fact that the implementation of the planned undertaking should not have a significant influence on the populations of Springy turf-moss *Rhytidiadelphus squarrosus*, Red-stemmed feathermoss *Pleurozium schreberi*, Broom Forkmoss *Dicranum scoparium*, Spring snowflake *Leucoium vernal*, True oxlip *Primula elatior*, Common twayblade *Listera ovata*, Mezereon *Daphne mezereum*, Autumn crocus *Colchicum autumnale* and Stemless carline thistle *Carlina acaulis* in the area of the Lower Silesian Province, consent was given to purposeful destruction of specimens and habitats of the abovementioned protected plant species.

Moreover, due to the fact that the destruction of the remaining specimens and habitats of protected plant and animals species indicated in the sentence of this decision is unavoidable during the implementation of the abovementioned investment, certain conditions were imposed to mitigate the negative environmental impact of the abovementioned investment and restore the habitats of protected butterfly species (3.A). Furthermore, certain conditions were imposed to limit the influence of the construction works related to the regulation works in the river bed and on the river slopes on fish in the period of their breeding and spawning migrations (3.B). In addition, to prevent accidental killing of bats present in building cracks and tree hollows, a condition was imposed concerning performance of the works in question under the supervision of an expert chiropterologist and performance of compensation measures (3.C), which are also included in the decision on the environmental conditions for undertaking implementation (a decision of the Regional Director for Environmental Protection in Wrocław of February 27th, 2015, ref. No.: WOŚ.4233.8.2012.ŁCK.47 amended by the General Director for Environmental Protection, re. No.: DOŚ-oa1.4233.21.2015.is.15 of April 6th, 2016).

Moreover, a condition was imposed to limit the influence of the construction works related to the regulation of the river slopes on the remaining species of mammals (except bats) living in the neighbourhood of the watercourse and in the construction site area during undertaking implementation; the condition indicates the need for performing the works under the supervision of an expert mammalogist (4).

The conditions defined in clause 5 and 6 which concern the commencement of construction works before the breeding season of birds are aimed at preventing the birds coming back from their wintering grounds from building nests in the investment area. This shall enable one to mitigate the impact on the abovementioned bird species in the course of investment implementation and ensure the birds time to find new nesting places. Furthermore, clause 6.b imposes a condition concerning the protection of a nesting place of Black stork *Ciconia nigra* – a bird species subject to strict protection and requiring active protection.

Taking into account the lack of alternative solutions and the fact that the planned investment shall not have crucial impact on the population of species and finally the necessary requirements of the overriding public interest, the permission on habitat destruction of abovementioned species is hereby given.

This permit is issued to allow for the implementation of an undertaking entitled: Task 2A.1/1 “Construction of “Bobosów” – a dry flood control reservoir on Nysa Kłodzka River”, for which an Environmental Impact Assessment was conducted and was concluded by issuing a decision on the environmental conditions for implementation of the investment; the decision was issued by the Regional Director for Environmental Protection in Wrocław on February 27th, 2015 (ref. No.: WOŚ.4233.8.2012.ŁKC.47 amended by the General Director for Environmental Protection, re. No.: DOŚ-oa1.4233.21.2015.is.15 of April 6th, 2016).

The conditions defined in the present decision shall be implemented together with the conditions contained in the decision on the environmental conditions for implementation of the investment.

Information

The party may appeal against the decision to the General Director for Environmental Protection via the body of the Regional Director for Environmental Protection within 14 days of the delivery date.

Under Article 127a of Code of Administrative Procedures, during the period for the appeal, the party may waive the right of appealing to the body of public authority, which issued the decision. On the day of submitting to the public authority the notification of waiving the right of appealing by the last party to proceedings, the decision shall become final and binding.

A stamp duty has been charged in the amount of 82 PLN according to the part III Par.44 Subpar. 2 of Annex to the Act of November 16th, 2006 on stamp duty (Journal of Laws of 2018, item 1044 as amended).

Recipients:

Marek Kłonica, the Proxy of the Director of the Regional Water Management Authority, State Water Holdings Polish Water, Odra-Wistula Flood Management Project, PIU JV SWECO, UL. Armii Krajowej 61, Building C, 50-541 Wrocław

[stamps:]

Regional Director for Environmental Protection in Wrocław

pp. Regional Director for Environmental Protection in Wrocław
Katarzyna Łapińska