



FACTSHEET



for people living in areas covered by
implementation of the Contract titled:

3A.2 Flood protection in Serafa Valley

**3A.2/4 Flood protection in Serafa Valley -
Serafa 2 reservoir**



CONTRACT 3A.2/4

UNIT RESPONSIBLE FOR IMPLEMENTATION - THE INVESTOR:

State Water Holding Polish Waters (PGW WP)
Regional Water Management Authority in Cracow 22
Marszałka J. Piłsudskiego Street
31-109 Cracow

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This Contract is located in the poviats of the City of Cracow and Wieliczka, and is implemented as an element of the *Odra – Vistula Flood Management Project* under Component 3: Flood protection of the Upper Vistula Subcomponent 3A: *Protection of Upper Vistula Towns and Cracow*.

ABOUT THE INVESTMENT

The Odra-Vistula Flood Management Project is co-funded using financial resources provided by the International Bank for Reconstruction and Development (also referred to as the World Bank), Council of Europe Development Bank, and at support of the European Union Cohesion Fund (IEOP 2014 – 2020), and the State Budget.

The overriding purpose of the Contract titled: “3A.2 Flood Protection in Serafa Valley - Works Contract 3A.2/4 Flood protection in Serafa Valley – Serafa 2 reservoir” is protection of human life and assets against the effects of floods occurring directly in the area of the District of the City of Cracow and in the District of Wieliczka. The investment is the completion of works related to the extension of the embankments of the river carried out in previous years of Vistula River and should be treated as part of the entire Krakow flood protection system.

**We encourage people, who
would like to receive additional
information on the Contract, to
contact us.**

**INQUIRY OFFICE FOR PROJECT
AFFECTED PERSONS:**

✓ *Directly or by phone*

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WHO IS THE INVESTOR?

The Investor for the Contract is the State Water Holding Polish Waters – Regional Water Management Authority in Cracow.

WHEN WILL THE REAL PROPERTY ACQUISITION PROCEDURE FOR INVESTMENT PURPOSES START?

The real property acquisition procedure connected with implementation of the Contract shall start on the day the State Water Holding Polish Waters – Regional Water Management Authority in Cracow applies to the Lesser Poland Governor for issuing a Decision on the investment project implementation permit as regards the flood protection facilities, hereinafter referred to as IPIP. The application shall contain the specification of proposed investment boundaries and maps containing real property splitting plans enclosed thereto. The Lesser Poland Governor is to issue the IPIP within 90 days. From the moment of commencing the proceeding, the owner shall be obliged to inform the Governor about any changes related to the property. The IPIP decision shall approve the real property splitting and shall determine the plots to become, by virtue of law, the property of the State Treasury on the day when the decision becomes final. From that moment on the previous owner cannot administer the property or its part, which became a property of the State Treasury, e.g. the owner can neither sell the property acquired for the purpose of contract implementation nor establish life estate right, mortgage, easement or other limited property rights.

The previous owners shall not receive the IPIP decision itself (as it is usually extremely extensive and includes lots of appendices), but only a notice of issuing it, which is sent to the address specified in the cadaster.

Therefore, owners and holders of perpetual usufruct rights should keep their address data in the land and property register updated. If the data is not up-to-date, they may not find out about ongoing proceedings and about the issuance of the IPIP decision. Owners and holders of perpetual usufruct rights are entitled to compensations for expropriation. In addition, for the persons who – within 30 days from the day of receiving the notice of issuing the IPIP decision – appear in RZGW in Cracow or send a declaration and hand over the real property, the compensation for expropriation of real property shall be increased by 5%.

WHAT IS THE WAY OF DETERMINING AND PAYING THE COMPENSATION FOR EXPROPRIATED REAL PROPERTIES?

The value of compensation is determined in the course of agreements made between the investor and the previous owner or holder of perpetual usufruct rights. The compensation is paid by the SWH PW – RZGW in Cracow. The date of payment is specified in the agreement made by the parties.

If the compensation is not determined within 2 months from the day on which the IPIP decision becomes final, it shall be determined by the Lesser Poland Governor by virtue of decision. In such a case, the compensation is paid within 14 days from the day on which the decision about determination of the value of compensation becomes final.

If owner or holder of perpetual usufruct rights of real property appeals from the decision determining the value of compensation, they shall be paid, at their request, the amount specified in the decision (undisputable amount of compensation). Payment of that amount does not affect the ongoing appeal proceedings.





HOW IS THE AMOUNT OF COMPENSATION DETERMINED?

The principles set forth in the act on real property management apply to determine the amount of compensation.

The amount of compensation is determined by certified appraisers, on the basis of the market value (and, if it cannot be determined, on the basis of replacement value) of real property as of the day of issuing the IPIP decision, what means that any expenditures and costs incurred by the owner after issuance of the IPIP decision shall not be considered when determining the value of compensation. The compensation due to the previous owners or holders of perpetual usufruct rights shall be reduced by the amount of limited property rights (e.g. use, easement, pledge, co-operative ownership right to the premises or mortgage) established on the real properties.

The amount of compensation is determined according to the status of the property as of the day of IPIP issuance, but according to the property value on the day when the compensation amount is established.

Cash compensations shall be granted, if:

- a) the acquisition of a real property or its part does not influence the possibility of using the real property for its former purposes;
- b) the Project Affected Person on whom the Project has an economic impact expresses their will to receive cash compensation;
- c) there are no similar real properties with an equivalent productive potential and market value present on the market, which prevents “landfor-land” compensation.

In case of “land for land” compensation form, the difference between the amount of compensation determined in the decision and the value of replacement real property is settled in the form of cash supplement. Compensation may be determined in favour of the previous owners of real properties, holders of perpetual usufruct rights or persons who hold limited property rights to such properties (e.g. usufruct, personal easement, land easement or mortgage). That results from the fact that the IPIP not only deprives of ownership or perpetual usufruct right, but also causes extinction of limited property rights.

All persons entitled to compensation, i.e. the previous real property owners, holders of perpetual usufruct rights and persons who held limited property rights to such properties, as well as SWH PW - RZGW in Cracow participate in the proceedings as the parties. Therefore, they have at their disposal a number of legal instruments with which they can affect the amount of compensation.

If the previous owner or perpetual user of the property under IPIP would hand this property over or would hand the property over and empty the building and other rooms not later than 30 days from the day of:

- delivery of the notice of issuing of the IPIP decision,
- delivery of decision to order immediate enforceability on the IPIP decision,
- the date on which the IPIP decision became final,

the amount of compensation shall be increased by the amount equal to 5% of the property value or value of perpetual usufruct right, based upon rules determined in the Special Flood Act.

WHAT HAPPENS IF ONLY A PART OF REAL PROPERTY WAS EXPROPRIATED BUT THE REMAINING PART SHALL NOT BE SUITABLE FOR PROPER USE FOR PRESENT PURPOSES (THE SO-CALLED REMNANT REMAINS)?

If only a part of real property was acquired for purposes of the Investment implementation and the remaining part, the so-called remnant, is not suitable for proper use for the present purposes, SWH PW - RZGW in Cracow is obliged to purchase it upon the motion of the owners.

When submitting the motion for remnant purchase by SWH PW – RZGW in Cracow, it is necessary to remember that the motion has to contain justification why the part of the real property which was not acquired is not suitable for proper use for present purposes. A copy of cadastral map with the remnant marked should be enclosed to the application. The motion for purchasing the remnant by SWH PW – RZGW in Cracow shall be assessed by a committee appointed by the Investor. In case of decision to purchase the remnant, SWH PW - RZGW in Cracow shall engage an independent certified property appraiser to value such a real estate.





The appraiser's opinion shall be available to the applicant holding a legal title to the remnant, who would be able to study it and, if necessary, raise remarks to it.

After holding negotiations regarding the amount of compensation for the remnant, an agreement shall be concluded for the remnant purchase, in the form of a notarial deed. If an owner or holder of perpetual usufruct rights fail to reach an agreement with SWH PW - RZGW in Cracow as regards the remnant purchase or the value of compensation, they may bring an action before civil court.

WHAT DOES PERMANENT RESTRICTION IN USE OF A PROPERTY MEAN?

A permanent restriction in use of a property is established under the IPIP decision for the properties, which do not become properties of the State Treasury, but are entirely or partially necessary for use of the investment.

Limitations and related inconveniences, and limitation of economic and market potential of the properties (e.g. a development ban, ban to plant trees or to form, etc.) affect the market value of the properties adversely, and shall be compensated via fair compensation established by certified property appraisers.

If the owner or the holder of perpetual usufruct rights would deem that the property, where permanent limitation in use was established, is useless, they may request for its purchase through a civil-law agreement through providing an application within 90 days from the day of notifying about the commencement of proceeding on the issuance of IPIP, in accordance with Article 22 (2) of the Special Flood Act (the purchase cannot be requested by owners of properties, where public roads are located, i.e. by units of local authorities or by the State Treasury).

WHAT HAPPENS IF THE EXPROPRIATED PROPERTY IS SUBSIDIZED?

Expropriation of subsidized properties and properties covered by support programs may cause inability to fulfil liabilities given under particular programs, as accepted by the farmer in agreements with a certified state payment agency, i.e. Agricultural Restructuring and Modernization Agency (ARMA). This in turn may relate to determined consequences, including the necessity of returning the obtained payment and administrative penalties.

A solution for that problem is implementation – on the European Union's regulation level – of a special mechanism and of a definition of so-called force majeure, which obviously disables the farmer from fulfilling the contractual liabilities. Those provisions contain an opened catalogue of cases, when we face the force majeure. That catalogue includes the following as manifestation of force majeure, e.g. property expropriation. In order to apply that mode, initiative of the farmer/beneficiary is however necessary. They need to notify the District ARMA Office Manager about the occurrence of force majeure (in that case: expropriation and/or permanent restriction in the use of properties) in writing, along with relevant evidence (a copy of IPIP decision), within 15 working days counted from the day when they or a person authorized by them are able to perform that action (in case of RDP 2007-2013 and 2014-2020 that deadline amounted to 10 working days).

CAN A REAL PROPERTY BE USED AFTER ISSUANCE OF THE IPIP DECISION?

The IPIP decision specifies the date of respectively releasing the real property or releasing the real property and emptying apartments and other spaces.

If expropriated real property is developed with a residential building or a building in which separate residential premises was established, SWH PW - RZGW in Cracow is obliged to indicate a replacement accommodation.

Every expropriated person shall be entitled to use the land free of charge in the former manner till the moment of receiving the compensation or (if no agreement was reached on the amount of compensation) its undisputed part.

Release of real property shall take place after harvesting the current cultivations, in case of plots on which agricultural activity is performed in a given vegetation year attributed to given cultivation. If the cultivations are not harvested, a cash equivalent shall be paid (owners shall be informed in a separate note about a necessity of handing the properties over).



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