

Decision no. 4175/OS/2017

Issuing unit Silesian Voivodship Marshal

Case Application dated 12 June 2017 (no number) of Mr. Michał Węgrzyn of Habitat Selection s.c., Kolecki Mateusz, Węgrzyn Michał, 35. Sławkowice, 32-020 Wieliczka, acting based upon a power of attorney provided by the Lesser Poland Board of Amelioration and Water Structures in Cracow, with its registered office at 73. Szlak Street, 31-153 Cracow, on the provision of water-law permit for the investment task titled "Construction of the left backwater embankment of the Dłubnia River in the City of Cracow", as submitted to the Silesian Voivodship Marshal with Resolution of the President of State Water Management Authority no. 145/2017 (note dated 07/06/2017, ref. no.: BAP-po.026.197.2017.JA).

Basis Article 104 of the Act of 14 June 1960 – Administrative Proceeding Code (uniformed text: OJ of 2017, item 1257); Article 9 (1) item 1a) and item 19 letter a), (2) item 1 letter b) and item 2, Article 122 (1) item 3, Article 123 (2) and (3), Article 127 (5), Article 140 (2) item 2 of the Act of 18 July 2001 Water Law (uniformed text: OJ of 2017, item 1121).

I decide as follows:

- I. The Lesser Poland Board of Amelioration and Water Structures in Cracow received a water-law permit for the development of left bank backwater embankment for the River Dłubnia at embankment chainage km 1+136 – 1+612 (Dłubnia River chainage km 1+577 – 2+140), over a length of 476 m, and of facilities functionally associated with the embankment, on register plots no.: 380, 381, 624, 350/1, 514, 353, 516/1, 515/8, 515/10, 510, 354, 356, 357, 379 (area no. 0046, register unit of Nowa Huta, City of Cracow).

Geographical coordinates:

- Beginning of the embankment at chainage km 1+136: E: 20°04'05,603" / N: 50°03'44,485"
- End of the embankment at chainage km 1+612: E: 20°04'01,567" / N: 50°03'55,609"

Scope of the water-law permit:

- 1) Development of an earth-fill embankment over a length of 476 m, having the following parameters:
 - Class I embankment with derivation from technical conditions for Class II;
 - Elevation of the embankment crest:
 - o At embankment chainage km 1+136 embankment crest elevation is 200.91 m a.s.l.,
 - o At embankment chainage km 1+612 embankment crest elevation is 200.96 m a.s.l.;
 - Embankment crest's width: 4.0 m;
 - Riverside slope grade: 1:2.5;
 - Landside slope grade: 1:2;
 - Landside concrete strip at the embankment at embankment chainage km 1+204 – 1+342;
- 2) Development of anti-filtration protection at embankment chainage km 1+136 – 1+576:

- Sealing of the subbase with a vertical hydro-insulating membrane in the riverside foot, developed using deep soil mixing method, thickness of min. 40 cm and depth of 3.0 m, except for a crossing between the embankment and the low-pressure gas pipe, where the membrane shall be developed using jet-grouting;
 - Sealing of the body with a bentomat screen placed at the riverside slope, anchored to the embankment crest, linker with the vertical membrane, and additionally protected with a steel mesh against rodents;
- 3) Development of embankment ramps at chainage km 1+186, 1+309, 1+604:
- Embankment ramp at chainage km 1+186: E: 20°04'03,497" / N: 50°03'45,754"
 - Embankment ramp at chainage km 1+309: E: 20°03'58,348" / N: 50°03'47,956"
 - Embankment ramp at chainage km 1+604: E: 20°04'01,173" / N: 50°03'55,527"
- 4) Development of U-turn at chainage km 1+366:
- U-turn at embankment chainage km 1+366: E: 20°03'56,863" / N: 50°03'49,329"
- 5) Development of embankment lock at chainage km 1+244, with a diameter of 800 mm, channel section 24.50 m, geographical coordinates: E: 20°04'01,065" / N: 50°03'46,793", with an inlet designed as an intake chamber for the pumping station, and with an outlet constructed as a reinforced-concrete docking abutment, with a return valve on the riverside, equipped with an emergency closure shaft and concrete stairs on the riverside and on the landside of the embankment, and with descends to lock abutments:
- Embankment lock at embankment chainage km 1+244: E: 20°04'01,065" / N: 50°03'46,793"
- 6) Development of reinforcement made of fascine bundle for the ditch foot, ended with a wooden palisade at the inlet to and the outlet from the embankment lock;
- 7) Development of a maneuvering yard with a station for mobile pumps in the area of the lock at chainage km 1+252:
- Maneuvering yard at embankment chainage km 1+252: E: 20°04'01,023" / N: 50°03'47,269"
- 8) Development of a traffic artery with a hardened surface on the embankment crest at chainage from km 1+136 to 1+612:
- Traffic artery on the embankment crest at chainage from km 1+136 to 1+612:

Beginning	E: 20°04'05,603" / N: 50°03'44,865"
End	E: 20°04'01,567" / N: 50°03'55,609"
- 9) Development of a traffic artery with a hardened surface on the strip crest at the embankment at chainage from km 1+204 to 1+342:
- Traffic artery on the strip crest at the embankment at chainage from km 1+204 to 1+342:

Beginning	E: 20°04'03,497" / N: 50°03'45,754"
End	E: 20°04'01,023" / N: 50°03'47,269"
- 10) Development of a traffic artery with a surface sown with grass at the landside slope's foot at chainage km 1+366 - 1+612:
- Traffic artery at the landside slope's foot at chainage km 1+366 - 1+612:

Beginning	E: 20°04'01,023" / N: 50°03'47,269"
End	E: 20°04'01,567" / N: 50°03'55,609"
- 11) Development of a traffic artery with a surface sown with grass at the riverside slope's foot at chainage km 1+136 - 1+612:
- Traffic artery at the riverside slope's foot at chainage km 1+136 - 1+612:

Beginning	E: 20°04'05,603" / N: 50°03'44,865"
End	E: 20°04'01,567" / N: 50°03'55,609"

12) Redevelopment of a low-pressure gas pipe over a length of 52.0 m at chainage km 1+292:

- Gas pipe at embankment chainage km 1+292 E: 20°03'58,740" / N: 50°03'47,660"

13) Development of a power post in the course of line enSD at chainage km 1+432.

II. An obligation to establish time of validity is not related to water-law permits for the development of water facilities. Based upon Article 135 (3) of the Water Act, a water-law permit expires if the investor did not commence finishing of the water facilities within 3 days from the day the water-law permit for the development of those facilities became final.

III. The Lesser Poland Board of Amelioration and Water Structures in Cracow is obliged to:

- Assure the compliance for performance of all of the works with design documentation, conditions determined in item I of this decision, and with the binding provisions;
- Perform the works associated with implementation of the subject investment in a way not posing risk to the environment;
- Perform the works under supervision of an authorized person;
- Reinstate the land to the proper condition after completing the works;
- Undertake immediate actions to remove failure in case of its occurrence;
- Maintain proper technical conditions for facilities and objects covered by this decision.

IV. The decision was issued based upon documentation titled: "Water law study. Construction of the left backwater embankment for the River Dłubnia at embankment chainage from km 1+136 to 1+612, i.e. at chainage of the Dłubnia River from km 1+577 to 2+140, in the City of Cracow, Lesser Poland", as developed in April 2017 by Mr. Eng. Jarosław Jaskólski MSc, having a civil engineering license no. MAP/0332/POOH/14.

V. The water law permit does not form rights to properties and water facilities necessary for its implementation, and does not violate the ownership titles and rights of third parties to those properties and facilities.

VI. The Applicant, who did not obtain rights to properties and facilities necessary to implement the water-law permit, cannot claim for returning the expenses borne for the permit provided.

VII. A decision on exclusion of data included in the application from publication was not issued during the proceedings.

VIII. This decision does not release the unit from obtaining any decision and permits required by law based upon other provisions.

IX. Not observing the conditions determined in this decision shall cause its limitation or withdrawal without compensation, in accordance with Article 136 of the Water Law Act.

Justification

Based upon Resolution dated 6 July 2017, ref. no.: BAP-po.026.197.2017.JA, the President of State Water Management Authority assigned the Silesian Voivodship Marshal for proceeding the case related to provision of a water-law permit for the investment titled "Construction of the left backwater embankment of the Dłubnia River in the City of Cracow" to the Lesser Poland Board of Amelioration and Water Structures in Cracow, acting through a proxy – Mr. Michał Węgrzyn. The Lesser Poland Board of Amelioration and Water Structures in Cracow, represented by Mr. Michał Węgrzyn, applied to the Lesser Poland Voivodship Marshal on 12 June 2017 for provision of a water-

law permit for the development of water facilities under task titled: "Construction of the left backwater embankment of the Dłubnia River in the City of Cracow", which comprises development of the left bank embankment at the River Vistula over a length of 476 m in connection to the redeveloped, existing left bank embankment of the River Dłubnia at chainage km 1+136 to 1+612, i.e. at chainage of the Dłubnia River from km 1+577 to 2+140. In turn the Lesser Poland Voivodship Marshal applied in the note of 20 June 2017, ref. no.: SR-IV.7322.1.128.2017, to the President of State Water Management Authority for assigning another unit for settling that case, as the applicant is a local organizational unit subordinated to the Lesser Poland Management Board, and therefore – in accordance with Article 127 (7b) and (7c) of the Water Law Act – it is justified to exclude the Lesser Poland Voivodship Marshal from settling the subject case.

The investment in question, which is a supplementation for the existing backwater embankment for the River Vistula, shall be implemented to close the issue of flood security and protection of the Dłubnia River Valley inhabitants in the area of Bardosa Street in Cracow.

In case of the aforementioned investment the Regional Director for Environmental Protection in Cracow determined the environmental conditions for the investment titled: "Construction of the left backwater embankment of the Dłubnia River in the City of Cracow" in a decision dated 4 September 2017, which became final on 10/06/2017, and determined it is one which may potentially significantly affect the environment, in conformity with Article 3 (1) item 65 of the Regulation of the Council of Ministers of 9 November 2010 on the investment which may significantly affect the environment (uniformed text: OJ of 2016, item 71). The investment shall be implemented based upon provisions of the Act of 8 July 2010 on the special rules for preparation of flood investments for implementation (uniformed text: OJ of 2017, item 1377, as amended).

The flood embankments along with functionally related objects are considered – based upon Article 9 (1) item 1a of the Water Law Act – as flood defenses. Those in turn are water facilities discussed under Article 9 (1) item 19 letter a). In conformity with Article 122 (1) item 3 of the Water Law Act, development of water facility requires a water-law permit. Article 140 (2) item 2 of the Water Law Act indicates that the water-law permit for the development of flood protection structures is to be issued by a voivodship marshal. Therefore, a unit relevant for the issuance of subject water-law permit is the Silesian Voivodship Marshal.

The Silesian Voivodship Marshal notified the parties with the note dated 7 November 2017, ref. no.: OS-WS.KW-00678/17, about commencing administrative proceedings on 13 October 2017 on the issuance of the water-law permit in question to the Lesser Poland Board of Amelioration and Water Structures in Cracow. The parties have been informed that they have a right to read the case documents, refer to the application, and to actively participate in any stage of proceeding and – prior to the issuance of the decision – to provide comments on collected evidence and materials and on notified claims. Information on commencing the proceedings was published through placement on the notice board in the Silesian Voivodship Marshal Office in Katowice and on an electronic notice board of the Public Information Bulletin.

The number of parties in the case related to the issuance of the water-law permit in question exceeded 20, therefore – in accordance with Article 127 (7a) of the Water Law Act – Article 49 of the Administrative Proceeding Code was applied. The Municipality of Cracow was provided with a public announcement notifying the parties on the commencement of proceedings and on the related rights.

The announcement was placed for fourteen days on the Municipality of Cracow Office's notice board.

In the course of the proceedings none of the parties raised remarks to the case in question. Marshal of the Silesian Voivodship analyzed the collected evidence and stated that there is no rationale, as indicated under Article 126 of the Water Law, which would result in refusing the issuance of water-law permit. As a consequence, he accepted the party's application and through this decision provided the requested water-law permit, with a reservation that the conditions listed under the decision shall be fulfilled.

In accordance with Article 123 (3) of the Water Law, if a title to properties or facilities necessary for implementation of the issued water-law permit would not be obtained, the applicant does not have a right to claim for return of expenses borne due to the obtainment of such a permit. Those provisions were included in this decision, and they mean that on the stage of issuing the water-law permit it does not matter whether the investor has a legal title to properties necessary for enjoying rights resulting from the aforementioned permit or not. As a result, it was decided as given in the conclusion.

Instruction

The party may appeal against the decision to the Chairman of State Water Management Authority through the Marshal of Silesian Voivodship within 14 days from serving date. In accordance with Article 127a of the Administrative Proceeding Code, in the course of time for appealing the party may relinquish the right to appeal against a public administration unit, which issued the decision. On the day of providing the public administration unit with a statement of relinquishing the right to appeal by the final of the parties of proceedings, the decision becomes final and binding.

pp. Voivodship Marshal

Witold Klimza

Deputy Director of

Environmental Protection Department

Recipients:

1. Mr. Michał Węgrzyn
Habitat Selection s.c. Kolecki M., Węgrzyn M.
35. Sławkowice, 32-020 Wieliczka
2. Lesser Poland Board of Amelioration and Water Structures in Cracow
73. Szlak Street, 31-153 Cracow
3. Regional Water Management Authority in Cracow
22. Piłsudskiego Steet, 31-109 Cracow
4. Polish Fishing Association – Branch in Cracow
43. Bulwarowa Street, 31-751 Cracow

5. Other parties of the proceedings notified about the decision in accordance with Article 127 (7a) of the Water Law Act and with Article 49 of the Administrative Proceeding Code in a form of public announcement published in the City Office of Cracow

CC:

1. Marshal Office, Management Board Service Department – register of decisions (on site)
2. File