

**REGIONAL DIRECTOR FOR
ENVIRONMENTAL PROTECTION
IN CRACOW**

OP-I.6401.404.2020.GZ

Cracow, December 18, 2020

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, 8, and 12 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 July 22, 2019, ref.: KR.ROO.012.128.2019.PP), as developed on December 8, 2020 (reception date: December 11, 2020), 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 implementation of the contract titled: *“Design and Construction Supervision. Management, Technical Assistance and Training Technical Support for the Project and Strengthening of PIO’s Institutional Capacity”*, work scope of which includes activities carried out on registered plots no. 126/6, 126/7, 126/8, 126/9, 126/12, 141/1, 141/2, 142/1, 143/3, 144/3, 164/1, 165/1, 166/1, 167/2, 168/1, 170/2, 170/3, 171/4, 171/8, 171/9, 171/10, 171/11, 176/1, 177/2, 177/3, 178/2, 178/3, 178/5, 178/6, 178/7, 178/8, 178/9, 178/10, 178/11, register unit 99 Podgórze, and 187/16, 187/50, 187/54, 187/9, 188/12, 188/35, 188/36, 188/38, 189/8, 189/9, 197/4, 961/3, 961/6, 986/1, 986/2, 986/3, register unit Wieliczka 3, Municipality of Cracow-Podgórze District of Cracow, Małopolskie Province, located within the Malinówka Stream Valley, remaining a left-bank tributary river for Serafa, 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 minimum 140 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 the following species of insects: red-tailed bumblebee (*Bombus lapidarius*), and 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 50 amphibians belonging to the following species: common frog (*Rana temporaria*).
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: great tit (*Parus major*), red-backed shrike (*Lanius collurio*), Eurasian blackcap (*Sylvia atricapilla*), common blackbird (*Turdus merula*), sedge warbler (*Acrocephalus schoenobaenus*), and pine bunting (*Emberiza leucocephalos*);
5. Destruction of habitats or refuges, which are the sites of breeding, rearing the young individuals, resting or feeding, and destroying, removing or damaging a dam built by beavers (*Castor fiber*).

II. The permit is valid from July 1, 2021 to July 31, 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 supervising team 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, 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 specimens 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 forms of amphibians 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.
11. In case of identifying breeding migration, in order to disable the access to the construction site for frogs, the site shall be fenced and protected with herpetological fencing, and herpetological supervision and potential catching of migrating specimens shall be provided along them.

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 potentially inhabited nests. The re-verification should be done by a person acting as the environmental inspector. If a hatch or a litter would be identified, the works need to be stopped and it is necessary to act according to the guidelines of the environmental supervisors.
 13. From December 15 to February 28 and from April 1 to June 30 it is not allowed to demolish dams, due to the wintering period for beavers and due to their breeding and rearing.
 14. The demolition shall be done in such a way to avoid flooding of the areas located downstream of the dam by water collected upstream of the dam, during the works.
 15. In case of identifying on registered plots no. 126/6, 126/7, 126/8, 126/9, 126/12, 141/1, 141/2, 142/1, 143/3, 144/3, 164/1, 165/1, 166/1, 167/2, 168/1, 170/2, 170/3, 171/4, 171/8, 171/9, 171/10, 171/11, 176/1, 177/2, 177/3, 178/2, 178/3, 178/5, 178/6, 178/7, 178/8, 178/9, 178/10, 178/11, register unit 99 Podgórze, and 187/16, 187/50, 187/54, 187/9, 188/12, 188/35, 188/36, 188/38, 189/8, 189/9, 197/4, 961/3, 961/6, 986/1, 986/2, 986/3, register unit Wieliczka 3, Municipality of Cracow-Podgórze District of Cracow, Małopolskie Province, located within the Malinówka Stream Valley, other animal species under protection 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 August 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 July 22, 2019, ref.: KR.ROO.012.128.2019.PP), applied on December 8, 2020 (reception date: December 11, 2020) to the Regional Director for Environmental Protection in Cracow for permit for intentional catching, destruction of habitats or refuges, which are the sites of breeding, rearing the young individuals, resting, migration, or feeding, and for intentional transferring from sites of regular occurrence to other sites in case of minimum 140 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 the following species of insects: red-tailed bumblebee (*Bombus lapidarius*), and 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 50 amphibians belonging to the following species: common frog (*Rana temporaria*); destruction of habitats or mainstays remaining breeding sites, raising sites for offspring, resting sites, migration or feeding areas for the following species of birds: great tit (*Parus major*), red-backed shrike (*Lanius collurio*), Eurasian blackcap (*Sylvia atricapilla*), common blackbird (*Turdus merula*), sedge warbler

(*Acrocephalus schoenobaenus*), and pine bunting (*Emberiza leucocephalos*); as well as destruction of habitats or refuges, which are the sites of breeding, rearing the young individuals, resting or feeding, and destroying, removing or damaging a dam built by beavers (*Castor fiber*). Precise number of specimens covered by the permit cannot be determined on that stage, and it shall be informed in the final report.

The actions shall be done in the Malinówka Stream Valley, remaining a left bank tributary river of Serafa, on plots no. 126/6, 126/7, 126/8, 126/9, 126/12, 141/1, 141/2, 142/1, 143/3, 144/3, 164/1, 165/1, 166/1, 167/2, 168/1, 170/2, 170/3, 171/4, 171/8, 171/9, 171/10, 171/11, 176/1, 177/2, 177/3, 178/2, 178/3, 178/5, 178/6, 178/7, 178/8, 178/9, 178/10, 178/11, register unit 99 Podgórze, and 187/16, 187/50, 187/54, 187/9, 188/12, 188/35, 188/36, 188/38, 189/8, 189/9, 197/4, 961/3, 961/6, 986/1, 986/2, 986/3, register unit Wieliczka 3, Municipality of Cracow-Podgórze, District of Cracow, Małopolskie Province, within the Serafa River Valley, due to implementation of the contract titled: *“Design and Construction Supervision. Management, Technical Assistance and Training Technical Support for the Project and Strengthening of PIO’s Institutional Capacity”*.

The application was accompanied by Report on the environmental inventory, containing numerous maps and photographs, done for the area of planned dry flood storage reservoirs located within the Serafa river-basin (Serafa 2, Malinówka 1, Malinówka 2, Malinówka 3), as developed on October 16, 2020 by Mr. Marcin Pakuła, Mr. Maciej Czarnecki, Mr. Marci Miętkowski, Mrs. Ewa Rypińska, and Mrs. Alicja Patej, and by the Decision of the Regional Director for Environmental Protection in Cracow dated October 29, 2012 (ref. no.: OO.4233.13.2012.BM) establishing environmental conditions for the investment titled:

1. *“Construction of a flood storage reservoir “Bieżanów” on the River Serafa at chainage km 7+284 in the City of Cracow”,*
2. *“Construction of a flood storage reservoir “Serafa - 2” on the River Serafa at chainage km 9+223 in the City of Cracow”,*
3. *“Construction of a flood storage reservoir “Malinówka - 1” on the Malinówka Stream at chainage km 0+220 in the City of Cracow”,*
4. *“Construction of a flood storage reservoir “Malinówka - 2” on the Malinówka Stream at chainage km 2+320 in the City of Cracow”,*
5. *“Construction of a flood storage reservoir “Malinówka - 3” on the Malinówka Stream at chainage km 3+017 in the City of Cracow and in the City of Wieliczka”,*

as well as the Decision of the Regional Director for Environmental Protection in Cracow dated September 18, 2020 (ref. no.: OO.420.4.3.2019.BM) amending the Decision of the Regional Director for Environmental Protection in Cracow dated October 29, 2012 (ref. no.: OO.4233.13.2012.BM).

Great tit (*Parus major*), red-backed shrike (*Lanius collurio*), Eurasian blackcap (*Sylvia atricapilla*), common blackbird (*Turdus merula*), sedge warbler (*Acrocephalus schoenobaenus*), and pine bunting (*Emberiza leucocephalos*) 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 (*Helix pomatia*), red-tailed bumblebee (*Bombus lapidarius*), buff-tailed bumblebee (*Bombus terrestris*), common frog (*Rana temporaria*), and Eurasian beaver (*Castor fiber*), are under partial protection (Appendix no. 2).

In case of the aforementioned animal species bans set out in Article 6 (1) items 2, 7, 8, and 12 of that regulation, i.e. intentional catching, destruction habitats or refuges, which are the sites of breeding, rearing the young individuals, resting or feeding, destroying, removing or damaging e.g. dams, 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 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.

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 through development of Malinówka 3 dry flood storage reservoir requires cutting down the trees and bushes colliding with the investment and changing the terrain relief to enable engineering works related to the construction of the dry reservoir described above and embankments surrounding it.

However, these measures will not be harmful to keeping wild populations of protected animal species mentioned in the application in proper protection condition, as they are quite common for Małopolskie Province. Applying environmental supervision for the measures in case of Roman snails and amphibians shall secure transferring their specimens from the investment site to replacement habitats with proper biological conditions, and in case of birds and mammals – 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 their habitats.

The population of beavers in the country, as well as in a local range, i.e. in Małopolskie Province, is 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, but only interfere in one of the forms of its environmental impact. The works comprising demolition of a dam do not cause reduction of that species' population. The animals affected by the demolition will surely move to another location with similar parameters, placed in a small distance. After the analysis it was therefore deemed that the requested actions shall not be harmful to keeping the proper condition for wildly occurring populations of Eurasian beaver.

While observing the rule of caution and the possibility of occurrence of other animals under protection subsequently within the investment site, e.g. weatherfish (*Misgurnus fossilis*), which has been mentioned in the Environmental Inventory Report by the authors, 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 September 18, 2020, ref. no.: OO.420.4.3.2019.BM. Only native species – proper for the sites

covered by the permit – shall be applied for the purpose of replacement planting. After completing the investment the reservoir's area shall be left for the purpose of natural succession. It shall allow for reinstatement of animal habitats listed under the application.

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, which meets the conditions set out in Article 56 (4) item 3 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 2019, item 1000, as amended).

Recipients:

1. Applicant.
2. OP-I file.

INFORMATION OF THE ADMINISTRATOR ON PERSONAL DATA PROCESSING

Due to enactment of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (hereinafter referred to as GDPR) on May 25, 2018, we hereby inform that:

- 1) The Regional Director for Environmental Protection with its office in Cracow, 25. Mogilska Street, 31-542 Cracow, administers your personal data.*
- 2) Your personal data shall be processed by the Regional Directorate for Environmental Protection for the purpose of administrative / court-administrative proceedings, in accordance with Article 6 (1) letter c) of the GDPR.
Provision of your personal data is voluntary, but necessary for fulfilling the legal obligation of addressing the case.*
- 3) Your data may be provided by the Regional Director for Environmental Protection in Cracow to units authorized to obtain information based upon commonly valid provisions of the law.*
- 4) Personal data provided by you shall be stored by the time required by provisions of the law.*
- 5) You have a right to access your personal data and a right to adjust them, limit their processing, and a right to transfer the data.*
- 6) Due to processing of your personal data you have a right to file a claim to the President of the Personal Data Protection Office.*
- 7) Contact data to the Data Protection Inspector: e-mail address: iod.krakow@rdos.gov.pl, postal address: 25. Mogilska Street, 31-542 Cracow.*