

Gorzów Wlkp., 11 October 2017

*[Received date: 13 October 2017]*

REGIONAL DIRECTOR  
FOR ENVIRONMENTAL PROTECTION  
IN GORZÓW WIELKOPOLSKI

WZŚ.4233.2.2017.KS

## DECISION

### on environmental conditions

Based upon Article 151 (1) item 1 of the Act of 14 June 1960 Administrative Proceeding Code (i.e. OJ of 2017, item no. 1257) – hereinafter referred to as the APC,

#### **I hereby refuse to reverse the decision**

of 3 February 2015, ref. no.: WOOŚ-II.4233.11.2014.NC,

on environmental conditions for the investment titled:

**“Wężyska – Chlebowo – construction of the left bank flood embankment of Odra river, municipalities Maszewo, Gubin, Krosno Odrzańskie”.**

## JUSTIFICATION

Regional Director for Environmental Protection in Gorzów Wielkopolski, acting based upon Article 147 and Article 149 (1) of the APC, reopened the proceeding ex officio with decision dated 25 August 2017, ref. no. WZŚ.4233.2.2017.KS, in relation to the case closed with the decision on environmental conditions dated 3 February 2015, ref. no.: WOOŚ-II.4233.11.2014.NC, for the investment titled: **“Wężyska – Chlebowo – construction of the left bank flood embankment of Odra river, municipalities Maszewo, Gubin, Krosno Odrzańskie”.**

Rationale for and the mode of reopening the administrative proceeding have been determined in Article 145 and following of the APC. The grounds for reopening the administrative proceeding completed with the final decision have been listed in Articles 145, 145a, and 14b of the APC. In accordance with Article 147 of the APC, reopening of the proceeding may be done upon an application, as well as ex officio.

In accordance with Article 145 (1) item 5 of the APC, if the case was completed with a final decision the proceeding is reopened, if new factual circumstances or new evidences existing on the day of issuance and important for the case, and unknown to the authorities issuing the decision, would be revealed.

In case of the investment titled “Wężyska – Chlebowo – construction of the left bank flood embankment of Odra river, municipalities Maszewo, Gubin, Krosno Odrzańskie”, on 3 February 2015 the Regional Director for Environmental Protection in Gorzów Wlkp. issued the environmental decision, ref. no.: WOOŚ-II.4233.11.2014.NC, which became final.

In the note of “Klub Przyrodników” dated 11 August 2017, ref. no.: L.dz. 750/2017, it was indicated that the only patch of *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils 6410 is located on site, where it is expected to add soil. It would cause inevitable destruction of this patch, because raising the land causes change of water relations remaining the basic factor for integrity of the habitat, and adding the soil would cause destruction of typical plants. Natural habitat 6410 is a subject of protection within Natura 2000 site Krośnieńska Dolina Odry, and therefore its destruction would remain an adverse impact on this site. According to the aforementioned note, the environmental decision issued by the Regional Director for Environmental Protection in Gorzów Wlkp. does neither include nor analyze this impact, which results from the fact – as informed by the author – that it has not been known to the authorities.

Due to the possible occurrence of new factual circumstances, which existed on the day of issuing the decision, it is necessary to perform proceedings in this range.

One shall also indicate that in accordance with Article 149 (2) of the APC the decision remains a basis for performing proceedings by relevant authorities on reasons for resuming and on settling merit of the issue.

In reference to the absence of inclusion – as stated in the aforementioned note of Klub Przyrodników – in the subject environmental decision of a natural habitat 6410 *Molinia* Meadows, and to the potential occurrence of new circumstances in that case, I hereby provide the following clarifications. The proceeding finalized with the issuance of the environmental decision took place in 2014. In accordance with provisions of the EIA Act the Investor provided the required documentation, including an investment information sheet (application dated 7 November 2014). The update of IIS referred to the *Molinia* meadows type plant group identified within plots no. 497/1, 496/1, and 685, area of Czarnowo, which remained the only patch of such a group within the area of planned actions, it was clarified that that meadow has a low potential to form natural habitat 6410, and currently has a status of potential habitat. It contains very low share of species specific for *Mollinia*, and especially there is no purple moor-grass *Mollinia caerulea*. The update to IIS stated that “That meadow remains a habitat developing itself within former meadows of *Calthion palustris* group, which is proved by the occurrence of species of this group within floristic composition, e.g.: cabbage thistle (*Cirsium oleraceum*), common rush (*Juncus effuses*), compact rush (*Juncus conglomeratus*), willowherb (*Epilobium palustre*). However, that meadow – in the process of secondary succession – slowly transforms into *Molinia* Meadow. This is caused by stopping the application of intensive farming (repeated mowing and fertilizing), and by temporary raise of ground waters caused by leakage through the Odra embankment during floods.” The study related to plant cover was developed by the botanist, Mr. Piotr Reda.

Taking the above into account during analyzing the data given in IIS in reference to the impact of planned investment on natural environment it was identified that the subject plant group of *Molinia* Meadow does not remain a natural habitat 6410. That is why it has not been the subject of consideration during the investment impact assessment. Additionally, a fact that during the planned

and necessary works the flood embankment in the area of that meadow will be sealed has been taken into account, and therefore ground water level fluctuations occurring within this area shall be significantly limited, thus the succession process leading towards transformation of that meadow into *Molinia* one, which remains a natural habitat 6410, shall be stopped.

As a consequence it shall be stated that at the issuance of the environmental decision determined in the introduction, the authorities had sufficient data to state that the subject meadow is not a natural habitat 6410, and therefore it did not need to determine conditions for implementation of the investment, including that habitat, in the decision.

As a consequence it shall be stated that there are no new factual circumstances, which existed on the day of issuing the decision on environmental conditions and were unknown to the authorities. In accordance with jurisdiction "new circumstances discussed under Article 145 (1) item 5 APC should present a determined factual or legal state, which has existed on the day of issuing the final decisions, but it was not known to the authorities due to reasons not attributable to those authorities, and affected substantial contents of the decision" (sentence of the VAC in Poznań of 31 August 2016, II SA/Po 473/16). Therefore, a rationale determined under Article 145 (1) item 5 APC was not met.

Considering the above, the Regional Director for Environmental Protection in Gorzów Wielkopolski decided as above.

#### **INSTRUCTION**

The parties may appeal against this decision to the General Director for Environmental Protection in Warsaw through the Regional Director for Environmental Protection in Gorzów Wielkopolski within fourteen days from the serving date.

Within the time for provision of the appeal the party may waive the right to appeal against the authorities issuing the decision. On the days of serving a statement on waiving the right to appeal by the last of the proceeding parties to the public administration unit, the decision becomes final and legally valid.

Regional Director for Environmental Protection  
in Gorzów Wielkopolski

Jan Rydzanicz

#### **Recipients:**

1. Lubuskie Board of Amelioration and Water Structures;
2. Other parties in the mode under Article 49 APC;
3. File.