

[stamp: PROJECT PL 1662
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Wrocław, August 26th, 2016

DECISION

Under Article 56 Par. 2 and Par. 4 Subpar. 6 and 7 in connection with Article 52 Par. 1 Subpar. 1, 2, 3, 7, 8, 9, 12, 13 and 15 of the *Nature Conservation Act of April 16th, 2004 (Journal of Laws of 2015, item 1651 as amended)*, § 2 and 3 and § 6 Par. 1, 2, 3, 7, 8, 9 and 12 Par. 2 and 3 of the *Regulation of the Minister of the Environment of October 6th, 2014 on protection of animal species (Journal of Laws of 2014, item 1348)* and Article 104 of the *Law of 14 June 1960 – Code of Administrative Procedure (Journal of Laws of 2016, item 23 as amended)*, after reviewing an application submitted by Ms. Dorota Serwecińska from AECOM Polska Sp. z o.o., who acts with the authorization of the Director of the Regional Water Management Authority in Wrocław (power of attorney No. DP.0113-91/2016 of April 21st, 2016), concerning issuing a decision exempting from bans related to specimens of animals subject to protection (an application of August 5th, 2016),

I permit the following

- purposeful killing of specimens, purposeful mutilation or catching, purposeful destruction of eggs or growth forms, destruction of habitats or refuges constituting their places of reproduction, growth of the young, rest, migration or feeding; destruction, removal or damaging of wintering grounds or other refuges; purposeful prevention of access to refuges, purposeful relocation from places of regular presence to new places, purposeful scaring and disturbing of the following species:** up to 30 specimens of Slow worm *Anguis fragilis*, up to 100 specimens of Common toad *Bufo bufo*, up to 40 specimens of Edible frog *Pelophylax esculentus (Rana esculenta)*, up to 20 specimens of Common frog *Rana temporaria*, up to 70 specimens of Common newt *Lissotriton vulgaris (Triturus vulgaris)*;
- purposeful killing of specimens, purposeful mutilation or catching, purposeful destruction of eggs or growth forms, destruction of habitats or refuges constituting their places of reproduction, growth of the young, rest, migration or feeding; purposeful prevention of access to refuges, purposeful relocation from places of regular presence to new places, purposeful scaring and disturbing of the following species:** up to 30 specimens of Grass snake *Natrix natrix*;

3. **purposeful killing of specimens, purposeful mutilation or catching, purposeful destruction of eggs or growth forms, destruction of habitats or refuges constituting their places of reproduction, growth of the young, rest, migration or feeding; destruction, removal or damaging of wintering grounds or other refuges; purposeful prevention of access to refuges, purposeful relocation from places of regular presence to new places of the following species:** Stone loach *Barbatula barbatula* and Brook lamprey *Lamperta planeri* – on a 3.5 km long section of the river course;
4. **purposeful killing of specimens, purposeful mutilation or catching, purposeful destruction of eggs or growth forms, destruction of habitats or refuges constituting their places of reproduction, growth of the young, rest, migration or feeding; destruction, removal or damaging of burrows, wintering grounds or other refuges; purposeful relocation from places of regular presence to new places, purposeful scaring and disturbing of the following species:** up to 50 specimens of European mole *Talpa europaea*;
5. **destruction of habitats or refuges constituting their places of reproduction, growth of the young, rest, migration or feeding; destruction, removal or damaging of burrows, lairs, lodges, dams, wintering grounds or other refuges; purposeful prevention of access to refuges, purposeful scaring and disturbing of the following species:** up to 4 specimens of Eurasian beaver *Castor fiber*, up to 2 specimens of Eurasian otter *Lutra lutra*;
6. **destruction of habitats or refuges constituting their places of reproduction, growth of the young, rest, migration or feeding; purposeful relocation from places of regular presence to new places, purposeful scaring and disturbing of the following species:** up to 5 specimens of each species – Common noctule *Nyctalus noctula*, Common pipistrelle *Pipistrellus pipistrellus*, Nathusius' pipistrelle *Pipistrellus nathusii*, Daubenton's bat *Myotis daubentonii*, Common long-eared bat *Plecotus auritus* and Grey long-eared bat *Plecotus austriacus*;
7. **purposeful scaring and disturbing of the following species:** up to 5 specimens of each species – Serotine bat *Eptesicus serotinus* and Particoloured bat *Vespertilio murinus*;
8. **destruction of habitats or refuges constituting their places of reproduction, growth of the young, rest, migration or feeding; destruction, removal or damaging of nests or other refuges; 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 of the following species:** up to 50 specimens of House sparrow *Passer*

domesticus, Common starling *Sturnus vulgaris* and Rook *Corvus frugilegus*; up to 20 specimens of Eurasian collared dove *Streptopelia decaocto*, European serin *Serinus serinus*, Eurasian siskin *Carduelis spinus*, Common chaffinch *Fringilla coelebs*, Eurasian blue tit *Cyanistes caeruleus* and Great tit *Parus major*; up to 10 specimens of European goldfinch *Carduelis carduelis*, Eurasian tree sparrow *Paser montanus*, Song thrush *Turdus philomelos* and Icterine warbler *Hippolais icterina*; up to 5 specimens of Eurasian jay *Garrulus glandarius*, Hawfinch *Coccothraustes coccothraustes*, Eurasian golden oriole *Oriolus oriolus*, Willow tit *Poecilla montana*, Long-tailed tit *Aegithalos caudatus*, Goldcrest *Regulus regulus*, Eurasian nuthatch *Sitta europaea*, Common chiffchaff *Phylloscopus collybita*, Willow warbler *Phylloscopus trochilus*, Lesser whitethroat *Sylvia curruca*, Garden warbler *Sylvia borin* and Black redstart *Phoenicurus ochruros*; up to 1 specimen of Eurasian eagle owl *Bubo bubo*; up to 19 pairs of Fieldfare *Turdus pilaris*; up to 12 pairs of Red-backed shrike *Lanius collurio*; up to 9 pairs of Tree pipit *Anthus trivialis*, Eurasian linnet *Carduelis cannabina* and Spotted flycatcher *Muscicapa striata*; up to 5 pairs of Marsh tit *Poecilla palustris*, European robin *Erithacus rubecula* and Whinchat *Saxicola ruberta*; up to 4 pairs of *Emberiza citrinella* and White wagtail *Motacilla alba*; up to 3 pairs of European greenfinch *Carduelis chloris*, Meadow pipit *Anthus pratensis* and Common whitethroat *Sylvia communis*; up to 2 pairs of European turtle dove *Streptopelia turtur*, Kingfisher *Alcedo atthis*, Corn bunting *Emberiza calandra*, Eurasian bullfinch *Pyrrhula pyrrhula*, Grey wagtail *Motacilla cinerea*, Eurasian blackcap *Sylvia atricapilla*, Eurasian wren *Troglodytes troglodytes*, Common blackbird *Turdus merula* and Great spotted woodpecker *Dendrocopos major*; up to 1 pair of Sparrowhawk *Accipiter nisus*, Common buzzard *Buteo buteo*, Common kestrel *Falco tinnunculus*, Eurasian treecreeper *Certhia familiaris*, White-throated dipper *Certhia familiaris*, Raven *Corvus corax*, Grey-headed woodpecker *Picus canus*, Eurasian wryneck *Jynx torquilla* and Brown owl *Strix aluco* as well as up to 5 sites of Eurasian skylark *Alauda arvensis*;

9. **destruction of habitats or refuges constituting their places of reproduction, growth of the young, rest, migration or feeding; 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 of the following species:** up to 20 specimens of Barn swallow *Hirunda rustica* and Common house martin *Delichon urbica*; up to 19 specimens of Common swift *Apus apus*; and up to 5 specimens of Common cuckoo *Cuculus canorus*,

in connection with the implementation of the undertaking entitled: “Construction of “Szalejów Górny” – a dry reservoir on Bystrzyca Dusznicka River” – in Szalejów Górny and Szalejów

Dolny villages (Kłodzko Municipality) in the Bystrzyca Dusznicka river valley (at river chainage from km 8+300 to km 12+500) between Szalejów Górny and Szalejów Dolny (to the north and to the west), Siemków (to the east) and the ridge line separating Szalejów Górny and Szalejów Dolny from Stary Wielisław (to the south), **on the following conditions:**

- 1) the animals (specimens of fish, amphibians, reptiles and mammals) shall be carried away from the construction works area only under the supervision of specialists in relevant fields of science: an ichthyologist, a herpetologist, a chiropterologist, and a zoologist;
- 2) the present permit shall be implemented together with the conditions imposed in the decision of the Regional Director for Environmental Protection in Wrocław on the environmental conditions for the undertaking consisting in the construction of “Szalejów Górny” dry reservoir on Bystrzyca Dusznicka River (ref. No.: WOOŚ.4233.8.2013.ŁCK.54) of September 30th, 2015 and the decision of the General Director for Environmental Protection (ref. No.: DOOŚoall.4200.24.2015.EK.7) of May 16th, 2016.

The permit is valid till December 31st, 2020.

Information about the scope of utilizing this permit shall be submitted to the Regional Director for Environmental Protection in Wrocław till January 15th, 2021.

JUSTIFICATION

On August 5th, 2016, the Regional Directorate for Environmental Protection in Wrocław received an application submitted by Ms. Dorota Serwecińska from AECOM Polska Sp. z o.o., who acts with the authorization of the Director of the Regional Water Management Authority in Wrocław concerning issuing a decision exempting from bans related to specimens of animals covered by protection.

The applicant needs the decision exempting from bans related to specimens of animals subject to protection in connection with the implemented undertaking entitled: “*Construction of “Szalejów Górny” – a dry reservoir on Bystrzyca Dusznicka River*”.

All the species listed in the application are subject to protection under the *Regulation of the Minister of the Environment of October 6th, 2014 on protection of animal species*, but only 12 species are subject to partial protection under Appendix No. 2 to the abovementioned *Regulation* (i.e. European mole *Talpa europaea*, Eurasian beaver *Castor fiber*, Eurasian otter *Lutra lutra*, Raven *Corvus corax*, Common toad *Bufo bufo*, Edible frog *Pelophylax esculentus* (*Rana esculenta*), Common frog *Rana temporaria*, Common newt *Lissotriton vulgaris* (*Triturus vulgaris*), Slow worm *Anguis fragilis*, Grass snake *Natrix natrix*, Stone loach *Barbatula barbatula* and Brook lamprey *Lamperta planeri*), while the remaining 68 listed species are

subject to strict protection under Appendix No. 2 to the abovementioned *Regulation*.

Animals subject to species protection under Article 52 Par. 1 Subpar. 1, 2, 3, 7, 8, 9, 12, 13 and 15 of the *Nature Conservation Act of April 16th, 2004* and § 6 Par. 1, 2, 3, 7, 8, 9 and 12 Par. 2 and 3 of the *Regulation of the Minister of the Environment on protection of animal species* are covered by bans on: purposeful killing, purposeful mutilation or catching, purposeful destruction of eggs or growth forms, destruction of habitats or refuges constituting their places of reproduction, growth of the young, rest, migration or feeding; destruction, removal or damaging of nests, anthills, burrows, lairs, lodges, dams, spawning grounds, wintering grounds and other refuges; purposeful prevention of access to refuges, purposeful relocation from places of regular presence to new places, purposeful scaring and disturbing as well as 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.

However, under Article 56 Par. 2 Subpar. 1 and 2 and Par. 4 Subpar. 6 and 7 of the *Nature Conservation Act*, a regional director for environmental protection may permit an exemption from the abovementioned bans in the area it governs if there are no alternative solutions available, provided that the activities do not have an adverse impact on the preservation of wild populations of protected animal species in an appropriate status and stem from the necessary requirements of an overriding public interest.

As stems from the application, killing or mutilation of animals impossible to identify and carry away before works commencement may take place during the implementation of the undertaking in question (e.g. if the animals hide in the brush or in burrows). Animal scaring may happen during the entire construction period. Habitats of the animals listed in the application shall be permanently destroyed and a dry flood control reservoir shall take their place.

Reservoir construction is aimed at the reduction of flood risk in the Kłodzko Valley (the Regional Director for Environmental Protection in Wrocław issued a decision on the environmental conditions for the undertaking in question, with ref. No. WOŚ.4233.8.2013.ŁCK.54, of September 30th, 2015, partially overruled by the decision of the General Director for Environmental Protection with ref. No.: DOŚoall.4200.24.2015.EK.7, of May 16th, 2016).

There are no alternative solutions available in the discussed case: due to technological reasons, it is impossible to implement the planned project without breaching the bans related to wild animals subject to species protection (however, the applicant assures the present body that all animals spotted during the performance of earthworks shall be caught and carried away from the construction site to avoid their mutilation or killing).

In view of the above, the present body permitted the prohibited activities in relation to the

discussed animal species, simultaneously imposing a condition that specimens of fish, amphibians, reptiles and mammals be carried away from the construction works area only under the supervision of specialists in relevant fields of science: an ichthyologist, a herpetologist, a chiropterologist and a zoologist (the above should ensure animal treatment in a manner corresponding to their species and biological requirements as well as carrying them to appropriate locations in terms of habitat).

Moreover, the present permit should be implemented together with the conditions imposed in the decision on the environmental conditions for the undertaking consisting in the construction of "Szalejów Górny" dry reservoir on Bystrzyca Dusznicka River (ref. No.: WOOŚ.4233.8.2013.ŁCK.54) of September 30th, 2015 and the decision of the General Director for Environmental Protection (ref. No.: DOOŚoall.4200.24.2015.EK.7) of May 16th, 2016, as the two documents are jointly aimed at minimizing the undertaking influence on the surroundings, including the populations of protected animals (I would like to highlight that the above decisions impose i.a. compensation measures related to destroying the nesting places of birds, i.e. performance of alternative nesting places in the form of nesting boxes/platforms adjusted to the requirements of individual species, including their later maintenance, as well as recommend hanging and later maintenance of nest boxes for bats in order to exclude the risk of destruction of bat breeding grounds during the removal of trees).

In the light of the above, it was ruled as in the sentence.

Information

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

Exempt from stamp duty under Article 7 Subpar. 2 of the Act of November 16th, 2006 on stamp duty (Journal of Laws of 2015, item 783 as amended).

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Sylvia Szefer-Michalak

Chief specialist at the Department of Nature Conservation and Natura 2000 Sites]

Recipients:

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