

[emblem of the Republic of Poland]

**MINISTER
OF MARITIME ECONOMY
AND INLAND NAVIGATION**

DOK.DOK3.9700.96.2019.MM

PW: 105866

[stamp]

SWECO

RECEIVED ON

Date: 06.12.2019

Warsaw, 05 December 2019

No. ZP-011.320.2019 Signature *[illegible signature]*

DECISION

Pursuant to the Article 138 par. 1 (2) in connection with the Article 127 par. 3 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as "CAP", having considered the application of the State Water Holding Polish Waters represented by Mr. Łukasz Gontarz to reconsider the case concluded by the decision of the Minister of Maritime Economy and Inland Navigation of 9 September 2019, Reference No.: DOK.DOK3.9700.145.2018.LD, through which the water law permits were granted for the State Water Holding Polish Waters for:

- construction of a hydro-engineering facility - berthing and mooring quay on the Regalica River in Szczecin;
- extension of a hydro-engineering facility, i.e. extension of the berthing basin on the Regalica River in Szczecin through:
 - a) demolition of technical and repair quay;
 - b) construction of a new technical and repair quay;
 - c) construction of a new quay at the berthing basin;
- demolition of hydro-engineering facilities - bank protections and a permanent jetty on the Regalica River in Szczecin;
- change of terrain on lands adjacent to the water, affecting the conditions of the water flow;
- locating new projects, which may have a significant impact on the environment in areas of particular flood risk;
- locating new buildings in areas of particular flood risk;

as a part of the implementation of the investment entitled "Berthing and mooring base for icebreakers" in the district of Podjuchy in the city of Szczecin, Szczecin County in the West Pomeranian Voivodeship

I am repealing the contested decision in so far as it relates to the paragraph I and paragraph II, and in that regard rule as follows:

- I. **I grant** the State Water Holding Polish Waters with its registered office in Warsaw a water law permit for:
 1. Construction of a hydro-engineering facility, i.e. construction of a berthing and mooring quay on plots with the registration numbers: 1/8, 1/12, 7/16, Dabie precinct, Szczecin Municipality, Szczecin County, West Pomeranian Voivodeship (coordinates: beginning of quay — X: 5915386.8931, Y: 5473018.6084, end of quay — X: 5915415.3887, Y: 5472980.6657) together with the dredging of the port basin in the Regalica River, with a strip of the maximum width of 30 m along the berthing and mooring quay, on the maximum area of 10300 m², to the depth of 4 m Am, on the plots with the registration numbers: 1/8 and 20, Dabie precinct, Szczecin Municipality, Szczecin County, West Pomeranian Voivodeship, with the following parameters:
 - quay length: 137.00 m;
 - maximum payload: 20.0 kN/m²;
 - ordinate of the quay top: + 1.5 m Am;
 - technical depth: 4.0 m Am;
 - permissible depth: 5.0 m Am;
 - cap with the dimensions of 1.5 m x 1.0 m.
 2. extension of hydro-engineering facilities, i.e. extension of the berthing basin in the Regalica River on plots of land with the registration numbers: 7/16, 20 Dabie precinct, Szczecin Municipality, Szczecin County, West Pomeranian Voivodeship, to the following parameters:
 - technical depth: 4.0 m Am;
 - permissible depth: 5.0 m Am;
 - width: 32 m;
 - length: 47.50 m;
 - through:
 - a) demolition of the technical and repair quay, with the following parameters and location:
 - quay length: 59.5 m;
 - ordinate of the quay top: from + 1.30 m Am to +1.50 m Am;
 - quay coordinates:
 - origin - X: 5915378.8432, Y: 5473012.6381;
 - centre - X: 5915407.8413, Y: 5472974.0278;
 - end - X: 5915416.6545, Y: 5472980.5399.
 - b) construction of a new technical and repair quay, with the following parameters and location:
 - length: 47.50 m;
 - maximum payload: 20.0 kN/m²;
 - ordinate of the quay top: +1.50 m Am;
 - technical depth: 4.0 m Am;
 - permissible depth: 5.0 m Am;
 - cap with the dimensions of 1.5 m x 1.0 m;
 - quay coordinates:
 - origin - X: 5915415.3887, Y: 5472980.6657;
 - end - X: 5915527.3562, Y: 5473059.3787.

- c) construction of a quay at the berthing basin, with the following parameters and location:
- quay length: 10.00 m;
 - maximum payload: 20.0 kN/m²;
 - ordinate of the quay top: + 1.50 m Am over the length of approximately 6.0 m;
+ 1.30 m Am over the length of approximately 4.0 m;
 - technical depth: 4.0 m Am;
 - permissible depth: 5.0 m Am;
 - cap with the dimensions of 1 x 1.0m.
- quay coordinates:
- origin - X: 5915386.8931, Y: 5473018.6084;
 - end - X: 5915415.3887, Y: 5472980.6657.
3. demolition of hydro-engineering facilities, i.e. demolition of bank protections and a permanent jetty on the Regalica River on plots with the registration numbers 1/8, 1/12, 7/16, Dabie precinct, Szczecin County, West Pomeranian Voivodeship, i.e.:
- a) bank protection No. 1, with the length of 12.0 m consisting of a sheet pile wall and the remainder of a concrete cap, with the coordinates of extreme points of the bank protection:
origin - X: 5915459.4437, Y: 5473012.4381;
end - X: 5915469.5266, Y: 5473018.8755.
- b) bank protection No. 2, with the length of 15.5 m consisting of a concrete cap set on a sheet pile wall, with the coordinates of extreme points of the bank protection:
origin - X: 5915469,5266, Y: 5473018,8755;
end - X: 5915482,6792, Y: 5473027.5300.
- c) bank protection No. 3, with the length of 21.0 m consisting of a sheet pile wall and the remainder of a concrete cap, with the coordinates of extreme points of the bank protection:
origin - X: 5915482.6792, Y: 5473027.5300;
centre - X: 5915477.6787, Y: 5473038.1599;
end - X: 5915485.5063, Y: 5473043.5661.
- d) bank protection No. 4, with the length of 14.0 m consisting of a sheet pile wall and the remainder of a concrete cap, with coordinates of extreme points of the bank protection:
origin - X: 5915469.5266, Y: 5473018.8755;
end - X: 5915482.6792, Y: 5473027.5300.
- e) permanent wooden jetty, with the length of 8.5 m, width 2.5 m, with coordinates of extreme points of the jetty:
origin - X: 5915483.9356, Y: 54713043.8451;
end - X: 5915488.6019, Y: 5473036.5097.
- II. **I grant** the State Water Holding Polish Waters with its registered office in Warsaw a water law permit to change the terrain on the land adjacent to the waters, on plots with the registration numbers: 1/8, 1/11, 1/12, 7/16, 20, Dabie precinct, Szczecin Municipality, Szczecin County, West Pomeranian Voivodeship, i.e. on an area of 12000 m² constituting a strip 85 m wide, consisting in the terrain change behind the quays within the range of the following ordinates: +1.5 m Am to + 2.2 m Am.

In the remaining scope, I sustain the decision.

Justification

Following the administrative procedure, by the decision of the Minister of Maritime Economy and Inland Navigation of 9 September 2019, Reference No.: DOK.DOK3.9700.145.2019.LD the State Water Holding Polish Waters was granted water law permits for the State Water Holding Polish Waters for:

- construction of a hydro-engineering facility, i.e. a berthing and mooring quay in the Regalica River in Szczecin;
- extension of a hydro-engineering facility, i.e. extension of the berthing basin in the Regalica River in Szczecin through:
 - d) demolition of the technical and repair quay;
 - e) construction of a new technical and repair quay;
 - f) construction of a new quay at the berthing basin;
- demolition of hydro-engineering facilities - bank protections and a permanent platform on the Regalica River in Szczecin;
- change of terrain on the land adjacent to the waters, affecting water flow conditions;
- locating new projects that may have a significant impact on the environment in areas of particular flood risk;
- locating new construction facilities in areas of particular flood risk;

as a part of the implementation of the investment named "Berthing and mooring base for icebreakers" in the Podjuchy district of the City of Szczecin, Szczecin County in the West Pomeranian Voivodeship.

With the application of 27 September 2019, Mr. Łukasz Gontarz – the Proxy of the State Water Holding Polish Water applied to the local authority to reconsider the case concluded by the above mentioned decision in the scope of changing the registration numbers of plots of land, on which the investment will be carried out. The Minister of Maritime Economy and Inland Navigation, by notification of 21 October 2019, Reference No.: DOK.DOK3.9700.96.2019.MM, issued pursuant to the Article 131 in connection with the Article 127 par. 3 CAP, informed the parties that the application for reconsideration of the case had been received and that it was possible to review the case file and to express opinions as to the evidence collected.

When examining the contested decision and the case documents, on which its issuance is based, in the light of the application for reconsideration submitted, the Minister of Maritime Economy and Inland Navigation concluded that this application deserved to be taken into consideration.

It should be stressed that the Article 15 of the CAP expresses the principle of two instances of administrative proceedings. The administrative case is therefore examined and decided twice. Double examination means the obligation to carry out the investigation twice in the entirety of the case, and consequently the appeal procedure, the subject matter of which is not the verification of the decision but the re-examination of the administrative case, is shaped to this end. Pursuant to the Article 127 par. 3 of the CAP, "a decision issued by the Minister in the first instance (...) cannot be appealed against, but a party dissatisfied with the decision may apply to this authority to reconsider the case; the provisions on appeals apply to this application accordingly". This means that in the case of decisions issued pursuant to the Article 127 par. 3 of the CAP, the provision of the Article 138 par. 1 of the CAP applies, and consequently such a decision should refer to a contested decision by submitting an application for reconsideration of the case.

The requested changes result from the originally erroneously entered plot numbers in the decision of 9 September 2019, Reference No.: DOK.DOK3.9700.145.2018.LD. When reconsidering the case it was established that the designed berthing and mooring quay will be located on the plots No. 1/8, 1/12 and 7/16 (plots No. 1/8 and 1/12 were originally indicated), the extension of the berthing basin in the Regalica River concerns the plots No. 7/16 and 20 (in the original decision only the plot No. 7/16 was included), whereas the planned demolition of the bank protections and the permanent platform on the Regalica River will be located on the plots No. 1/8, 1/12 and 7/16 (and not, as indicated in the original decision, on the plots No. 1/8 and 1/12). In addition, a change of terrain on the land adjacent to the waters is planned on the registered plots of land No. 1/8; 1/11; 1/12; 7/16; 20, Dabie precinct, Szczecin Municipality, Szczecin County, and not only on the registered plots of land No. 1/8; 1 7/16 as specified in the decision of 9 September 2019. Although the works planned to be carried out will partly concern plots of land other than those indicated in the original decision of the Minister of Maritime Economy and Inland Navigation, the catalogue of parties in the ongoing proceedings will not change. The changes applied for are irrelevant from the point of view of the powers obtained under the decision issued, but only result from the erroneously given plot numbers in content of the above mentioned decision. It was not possible to correct them in a possible decision issued by the local authority under the Article 113 par. 1 of the CAP, nor was it possible to amend the decision under the Article 155 of the CAP, as this procedure refers only to decisions which have become final, and moreover it refers to situations where, as the result of the examination of an administrative case, the authority could make various alternative decisions - based on the documentation presented. This procedure thus serves only to change the decision into a different one, also possible under unchanged factual and legal circumstances.

In view of the above, the Minister of Maritime Economy and Inland Navigation considered it appropriate to repeal the decision of 9 September 2019, Reference No.: DOK.DOK3.9700.145.2018.LD, in so far as it concerns the paragraph I and paragraph II, and then to rule on the substance of the case.

In this factual and legal situation, it was ruled as in the operative part of the decision.

INSTRUCTION

This decision is final as per instance procedure but may be challenged on grounds of its unlawfulness. The complaint shall be lodged with the Voivodeship Administrative Court in Warsaw through the Minister of Maritime Economy and Inland Navigation, within 30 days of the date of delivery of the decision to the party. The entry from the complaint is PLN 300. The party also has the right to apply for exemption from costs or the right to assistance.

[round official stamp partly illegible]

[oblong stamp]

pp. Minister

[illegible signature]

Grzegorz Witkowski

Undersecretary of State

Distribution list:

- 1) Mr. Łukasz Gontarz — Proxy of the
State Water Holding Polish Waters with its registered office in Warsaw;
correspondence address:
Sweco Consulting Sp. z o.o. Office in Szczecin
ul. Łyskowskiego 16, 71-641 Szczecin, Poland
- 2) State Water Holding Polish Waters
Regional Water Management Board in Szczecin
13a Tama Pomorzańska Street, 70-030 Szczecin, Poland
- 3) City of Szczecin
1 Armii Krajowej Square, 70-456 Szczecin, Poland
- 4) Office of Inland Navigation in Szczecin
4 Batorego Square, 70-207 Szczecin, Poland
- 5) Polish Angling Association District in Szczecin
3 Mickiewicza Street, 70-383 Szczecin, Poland
- 6) Ad acta