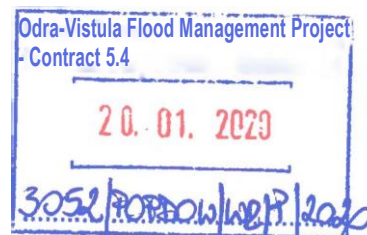




REGIONAL DIRECTOR FOR
ENVIRONMENTAL PROTECTION
in GORZÓW WIELKOPOLSKI

Gorzów Wlkp., on 15 January 2020

WPN-I.6401.1.2020.KS



DECISION

On the basis of Article 104 (1) of the Act of 14 June 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, with amendments) and Article 56 (2) (2) and (4) (3),(6) and (7), in connection with Article 51 (1) (2), (3), (7) and (10) as well as Article 52 (1) (7), (8) and (9) of the Act of 16 April 2004 on nature protection (Journal of Laws of 2018, item 2096, with amendments) as well as § 6 (1) (2), (3), (5) and (8) of the Regulation of the Minister of the Environment of 6 October 2014 on the protection of species of plants (Journal of Laws of 2014, item 1409) i § 6 (1) (7), (8) and (9) of the Regulation of the Minister of the Environment of 16 December 2016 on protecting animal species (Journal of Laws of 2016, item 2183), after examining the application submitted by Mr. Marek Kłonica Sweco Consulting Sp. z o. o., al. Armii Krajowej 61 (building C), 50 - 541 Wrocław, of 10 December 2019, reference No.: 2933/POPDOW/WR/W/2019 (date of receipt: 16 December 2019), acting under the authority of the State Water Holding Polish Waters, Regional Water Management Authority in Wrocław, ul. Norwida 34, 50 - 950 Wrocław (power of attorney No.: WR.R00.012.49.2019.KK of 11 February 2019), regarding the authorization of certain prohibited activities in relation to plant and animal species under strict species protection,

I, hereby, grant permit

to the State Water Holding Polish Waters, Regional Water Management Authority in Wrocław, ul. Norwida 34, 50 - 950 Wrocław, for performing the following activities in relation to plant and animal species under strict species protection, i.e.

- 1) intentional picking and damage, destruction of habitats, keeping and possession of plant species, i.e. floating fern *Salvinia natans* (1 site with a population of up to several dozen specimens) and water caltrop *Trapa natans* (2 sites with a population of up to several hundred specimens), located on the plot with cadastral number 1/1, precinct 2, the city of Krosno Odrzańskie, Krosno district, Lubuskie voivodeship (bridge and vicinity of the bridge over the river in Krosno Odrzańskie) and relocating them intentionally in the natural environment by moving them from their current habitat outside the investment area, i.e. within the same cadastral plot or within the Odra River bed up to 1 km above the work implementation site, i.e. to a plot of land with cadastral No. 154, precinct Chyże, the city of Krosno Odrzańskie, Krosno district, Lubuskie voivodeship and their replacement in the bed of the Odra River;
- 2) deliberate prevention of access to shelters and destruction of the habitats and nests of common house martin *Delichon urbicum* (60 nests) located on the road bridge structure, located on the plot with

registration number 1/1, precinct 2, city of Krosno Odrzańskie, Krosno district Lubuskie Voivodeship,
on the following condition:

- the removal of the nests of common house martin *Delichon urbicum* will commence after the ornithologist confirms that the habitats/nests have not been occupied by the aforementioned species during the breeding season, which should be documented by making a note;

in connection with the implementation of the project entitled: "*Expansion of national road No. 29 as part of the task entitled: Reconstruction of the road bridge in Krosno Odrzańskie at 514.1 km of the Odra River implemented as part of the Odra-Vistula Flood Management Project "Task 1B.1/1 (b)".*"

The permit is valid from 1 August 2020 to 30 December 2021.

At the same time, I oblige the Applicant to submit a report on the use of this permit to the Regional Director for Environmental Protection in Gorzów Wielkopolski **by 31 January 2021-2022**. The report should refer to the ref. number of this Decision.

JUSTIFICATION

Application of 10 December 2019, ref. No.: 2933/POPDOW/WR/W/2019 (date of receipt: 16 December 2019), Mr. Marek Kłonica Sweco Consulting Sp. z o. o. al. Armii Krajowej 61 (building C), 50 - 541 Wrocław, acting under the power of attorney of the State Water Holding Polish Waters, Regional Water Management Authority in Wrocław, ul. Norwida 34, 50 - 950 Wrocław (power of attorney No.: WR.R00.012.49.2019.KK of 11 February 2019), asked the Regional Director for Environmental Protection in Gorzów Wielkopolski for issuing a permit to deliberately pick and damage, destroy habitats, hold and possess species, i.e. floating fern *Salvinia natans* (1 site with a population of up to several dozen individuals) and a water caltrop *Trapa natans* (2 sites with a population of up to several hundred individuals), located on the plot with registration number 1/1, precinct 2, Krosno Odrzańskie commune (bridge and around the bridge on the river in Krosno Odrzańskie) and deliberate movement in the natural environment by moving them from their current place of living outside the area endangered by the works, i.e. within the same plot or within the Odra River bed up to 1 km above the place of works, i.e. on a plot with registration number 154, Chyże precinct and re-placement in the Odra River bed; deliberate prevention of access to shelters and destruction of the habitat and 60 nests of the common house martin *Delichon urbicum*, in connection with the implementation of the project entitled: "*Expansion of national road No. 29 as part of the task entitled: Reconstruction of the road bridge in Krosno Odrzańskie at 514.1 km of the Odra River implemented as part of the Odra-Vistula Flood Management Project "Task 1B.1/1 (b)".*", between 1 August 2020 and 30 December 2021.

The Regional Director for Environmental Protection in Gorzów Wielkopolski by letter of 18 December 2019, ref., No.: WPN-I.6401.419.2019.KS, notified the Applicant about the right of the party to read and make comments as to the collected evidence and materials before issuing a decision in the said matter pursuant to Article 10 § 1 of the Act of 14 June 1960 -Code of Administrative Procedure. During the procedure, the party exercised the aforementioned right and by letter of 09 January 2020, ref. No.: 3014/POPDOW/WR/W/2020 (date of receipt: 09 and 14 January 2020) announced that it did not submit any comments or requests to pending

procedure in this case.

On the basis of Appendix 1 to the Regulation of the Minister of the Environment of October 9, 2014 on the protection of plant species, floating fern *Salvinia natans* and water caltrop *Trapa natans* are subject to strict species protection.

In relation to wild plants, according to Article 51(1)(2, 3, 7 and 10) of the Act of 16 April 2004 on nature protection, there is a prohibition on deliberate picking or damage, destruction of their habitats or refuges, holding or possessing specimens of species, and deliberate movement in the natural environment. The above has been detailed in § 6(1)(2, 3, 5 and 8) of the aforementioned Regulation.

In the light of Article 5(18) of the Act on nature protection, a habitat of plants, animals or fungi means the area of occurrence of plants, animals or fungi during the entire life or any stage of their development. In the present case, works related to the implementation of the above investments qualify as destroying the habitat of the plant species concerned, and therefore as a violation of the prohibition referred to in Article 51(1)(3) of the Act on nature protection. According to Article 56(2)(1) of the aforementioned Act, this type of works may only be carried out after obtaining a permit from the Regional Director for Environmental Protection. Therefore, the implementation of this investment requires prior permit from the Regional Director for Environmental Protection in Gorzów Wielkopolski, issued pursuant to Article 56(2)(1) of the Act on nature protection, in derogation of the prohibitions referred to in Article 51(1).

On the basis of Appendix No. 1 to the Regulation of the Minister of the Environment of 16 December 2016 on the protection of animal species, common house martin *Delichon urbicum* is subject to strict species protection.

In relation to wild animals covered by species protection, according to Article 52(1)(7, 8 and 9) of the Act of 16 April 2004 on nature protection, the destruction of habitats or refuges that are their breeding, rearing, resting, migration or feeding area, destruction, removal or damage of nests, anthills, burrows, lairs, lodges, dams, spawning grounds, winter quarters or other shelters and deliberate prevention of access to shelters is prohibited. The above has been detailed in § 6(1)(7, 8 and 9) of the aforementioned Regulation.

In the light of Article 5(18) of the Act on nature protection, a habitat of plants, animals or fungi means the area of occurrence of plants, animals or fungi during the entire life or any stage of their development. The implementation of this investment consisting in the reconstruction of the bridge structure, on which there are nests of protected species, i.e. the common house martin *Delichon urbicum*, should be treated as a habitat of this species which is subject to legal protection. Therefore, each case of undertaking works resulting in the restriction of access of the species in question to its place of regular occurrence should be qualified as the destruction of the habitat of that species, and therefore as a violation of the prohibition referred to in Article 52(1)(7) of the aforementioned Act. Obtaining a permit does not only require removing nests from bird and mammal boxes as well as bird nests from building structures and green areas from 16 October to the end of February, when this is due to safety or sanitary reasons. The works related to the reconstruction of the bridge structure, on which there are protected species nests, results in the destruction of its habitat. Therefore, this requires prior permit from the Regional Director for Environmental Protection in Gorzów Wielkopolski, issued pursuant to Article 56(2)(2) of the Act on nature protection, in derogation of the prohibitions referred to in Article 51(1) of the cited act.

On the basis of Article 56(2)(2) of the Act on nature protection, the Regional Director for

Environmental Protection in the area of its activity may, in terms of wild species of protected plants, authorise activities which are subject to the prohibitions set out in Article 51(1)(2, 3, 7 and 10) i.e. deliberate picking or damage, destruction of their habitats or refuges, holding or possessing specimens of species, and deliberate movement in the natural environment as well as animals which are subject to protection, may authorise activities which are subject to the prohibitions set out in Article 52(1)(7, 8 and 9) i.e. destruction of habitats or refuges that are their breeding, rearing, resting, migration or feeding area, destruction, removal or damage of nests, anthills, burrows, lairs, lodges, dams, spawning grounds, winter quarters or other shelters and deliberate prevention of access to shelters is prohibited. The above has been detailed in § 6(1)(2, 3, 5 and 8) of the Regulation of the Minister of the Environment of 9 October 2014 on the protection of plant species as well as in § 6(1)(7, 8 and 9) of the Regulation of the Minister of the Environment on the protection of animal species.

According to Article 56(4)(3, 6 and 7) of the aforementioned Act on nature protection, the Regional Director of Environmental Protection in the area of its activity may, in the absence of alternative solutions, if it does not cause a threat to wild populations of protected animal species, authorise to derogate from the prohibitions set out in Article 52(1), if they are in the interest of public health or safety, or result from the necessary requirements of the overriding public interest, including social or economic requirements or requirements related to beneficial effects of fundamental significance for the environment, or they result from the legitimate interest of the party or the necessary requirements of the overriding public interest, including requirements of social or economic nature or requirements related to beneficial effects of fundamental significance for the environment, and in the event of one of the premises specified in Article 4(1-7) of the cited act.

According to the information provided in the application, the implementation of the requested activities is associated with the need to implement the project entitled: *"Expansion of national road No. 29 as part of the task: Reconstruction of the road bridge in Krosno Odrzańskie in 514.1 km of the Odra River implemented as part of the Odra-Vistula Flood Management Project "Task 1B.1 (b)".* According to the information contained in the application, the reconstruction of the existing road bridge is associated with ensuring a minimum clearance under the navigation structure for a class Va of the waterway, for the purpose of effective ice-breaking action and adaptation of the existing crossing in possible aspects to the conditions set by the Regulation of the Minister of Transport and Maritime Economy of 30 May 2000 on technical conditions to be met by road engineering structures and their location. In addition, the investment includes a road infrastructure project to adapt to the road bridge being reconstructed. The Applicant emphasized that there were no alternative solutions in relation to the adopted work technologies that would allow for complete elimination of environmental impacts. The activities requested result directly from the need to carry out construction works and reconstruction of the existing structures. It also noted that as part of the works, mitigation measures were planned to enable the reconstruction of environmental resources after the works were completed (in the case of plant species) and the re-establishment of nests by the common house martins within the bridge structure after its reconstruction. According to the information contained in the application, there are two *Salvinia natans* sites (up to several dozen individuals) and six *Trapa natans* sites (up to several hundred individuals) not threatened by destruction. The Applicant pointed out that the old nests of common house martin will be removed during the works. The operation will be carried out in the period

August/September - March, i.e. outside the breeding season of birds, after the young birds leave the nests. According to the information contained in the application, the breeding season of the common house martin generally ends in August, with individual birds being able to enter the second breeding, then the young birds may leave the nests at the turn of August and September. During the period of works related to the reconstruction of the bridge structure, carried out during the breeding season of birds (April - August), the bottom of the bridge structure should be secured so that the birds do not enter breeding grounds. It also noted that the protection will consist in installing the net, tightly adhering to the edges of the bridge and covering the entire structure underneath. Mesh should not be larger than 4x4 cm. The net should be made of a material resistant to tearing and weather conditions, and should be rigid enough to prevent birds from getting tangled in it. As per information contained in the application, in the late summer, the water caltrop sites are planned to be transferred to appropriate habitat sites (groyne fields), selected by a botany expert in the location above the construction work sites. The Applicant pointed out that specimens of floating fern plants will be transferred manually to places with appropriate habitat conditions, located outside the areas of the planned works, previously selected by a botany expert. According to the information contained in the application, the nuts and plants will be picked by hand, then they will be transferred to buckets filled with water from the river and moved a distance of about several hundred meters to re-locate them in locations with appropriate habitat conditions. The Applicant pointed out that the above activities will be carried out under the supervision of a botany expert. The activities requested will be carried out by the Contract Engineer team 1B. 1/1 (b) and the Contractor of works under the Works Contract 1B.1/1 (b).

In the present case, given the place and scope of the activities requested, there is no alternative to the activities requested. Destruction of the habitat and nest and preventing access to the shelters of the common house martin *Delichon urbica* will not cause a threat to maintain its wild population in good condition, because the common house martin is a numerous and widespread species throughout the country. In addition, there are a significant number of places within the city that could potentially constitute a breeding habitat for the aforementioned species in the form of other buildings structures. On the other hand, with respect to activities prohibited in relation to the plant species in question, i.e. floating fern *Salvinia natans* and water caltrop *Trapa natans*, the proposed actions will not pose a threat to maintain their wild populations in good condition. The requested actions will be implemented as part of the project: *"Expansion of national road No. 29 as part of the task: Reconstruction of the road bridge in Krosno Odrzańskie at 514.1 km of the Odra River implemented as part of the Odra-Vistula Flood Management Project "Task 1B.1/1 (b)".* The Applicant also noted that as part of the works, mitigation measures were planned to enable the reconstruction of environmental resources after the works were completed (in the case of plant species) and the re-establishment of nests by the common house martins within the bridge structure after its reconstruction.

Execution of the requested activities corresponds to the premise mentioned in Article 56(4)(3, 6 and 7) of the Act on nature protection, determining the issue of a permit by the Regional Director for Environmental Protection in Gorzów Wielkopolski.

In connection with the above, it has been decided as aforementioned therein.

INSTRUCTION

According to Article 130 § 4 of the Code of Administrative Procedure, the decision shall be enforced

before the deadline for filing an appeal, if it complies with the request of all parties.

According to Article 127 of the Code of Administrative Proceedings, the party may appeal against the decision to the General Director for Environmental Protection via the Regional Director for Environmental Protection in Gorzów Wielkopolski, within 14 days from its service.

At the same time I would like to inform that according to Article 127a § 1 of the Code of Administrative Procedure during the time provided for lodging an appeal, a party may waive the right to appeal against a public administration authority that issued the decision. A declaration of waiver of the right to appeal must be submitted to the Regional Director for Environmental Protection in Gorzów Wielkopolski. On the day of delivering the declaration of the waiver of the right to appeal to the public administration authority by the last party to the procedure, the decision shall become final and binding.

In order to implement the permit, the Regional Director for Environmental Protection in Gorzów Wielkopolski inspects the Applicant's compliance with the conditions set out therein, and also withdraws the permit if these conditions are not met, in accordance with Article 56(7a and 7j) of the Act on nature protection.

I would like to mention that in the event that plants, fungi and animals other than those mentioned in the permit are found during the commencement and implementation of the works, and if any prohibitions other than those in the permit are violated, an additional permit should be obtained from the Regional Director for Environmental Protection to derogate from the prohibitions, referred to in Article 51(1) and Article 52(1) of the Act on nature protection.

This permit does not exempt from the application of other provisions, including provisions specified in the Act of 23 April 1964 of the Civil Code (Journal of Laws of 2019, item 1145 with amendments). Therefore, prior to entering the property, the relevant consent of an authorised person (owner or manager) should be obtained.

To the application for a permit for activities which are subject to the prohibitions set out in Article 56(2) of the Act of 16 April 2004 on nature protection (Journal of Laws of 2018, item 1614 with amendments). the Applicant, on 10 December 2019, paid a stamp duty in the amount of PLN 82.00 (in words: eighty two zlotys 00/100) and on 04 November 2019 a stamp duty in the amount of PLN 17.00 (in words: seventeen zlotys 00/100) to the account of the Municipal Office in Gorzów Wlkp. 44 1020 5402 0000 0302 0325 6575.

*Kamila Strzesak
Nature protection inspector*



Received by:

1. Mr Marek Kłonica, Sweco Consulting Sp. z o. o., al. Armii Krajowej 61 (Building C), 50-541 Wrocław
2. ad acta