

REGIONAL DIRECTOR
FOR ENVIRONMENTAL PROTECTION
IN GORZÓW WIELKOPOLSKI

Gorzów Wlkp., 3 July 2019

received

Date: 08/07/2019

WPN-I.6401.226.2019.KS

DECISION

No.... signature...

Pursuant to Article 104(1) of the Code of Administrative Proceedings of 14 June 1960 (Polish Journal of Laws 2018, item 2096, as amended) and Article 56 section 2(1) and (2) and section 4(3), (6) and (7), in conjunction with Article 52 sections (1)(1), (3), (7), (8), (12) and (13) of the Nature Conservation Act of 16 April 2004 (Polish Journal of Laws 2018, item 1614, as amended), and § 6 section 1 items (1), (3), (7) and (8) and sections 2 and 3 of Regulation of the Minister of Environment of 16 December 2016 on conservation of animal species (Polish Journal of Laws 2016, item 2183), having examined the application filed by Ms Krystyna Araszkiwicz of Sweco Consulting Sp. z o.o., ul. Łyskowskiego 16, 71-641 Szczecin, representing the investor, State Water Holding Polish Waters – Regional Water Management Board in Szczecin, ul. Tama Pomorzańska 13A, 70-030 Szczecin (letter of authorisation No.: SZ.ROO.012.98.2019.MG dated 28 May 2019), dated 10 May 2019, ref.: POPDOW-ZPT.071.1.2018 (received on 15 May 2019), supplemented with the correspondence of 10 June 2019, ref.: POPDOW-ZPT.071.1.1.2019 (received on 13 June 2019), for granting permit for certain actions banned for the protected species,

I. I hereby allow

the State Water Holding Polish Waters – Regional Water Management Board in Szczecin for carrying out the following activities in Cybinka commune, km 548.4 of The Oder river, Słubicki district, Lubuskie province:

> ENTOMOFAUNA

- 1) intentional, incidental killing and deliberate destruction of the eggs or growing forms of the following species:
 - common carder bee *Bombus pascuorum* (10 pcs.),
 - buff-tailed bumblebee *Bombus terrestris* (10 pcs.),
 - red-tailed bumblebee *Bombus lapidarius* (10 pcs.),
 - early bumblebee *Bombus pratorum* (10 pcs.),
- 2) deliberate scaring off or disturbance of 20 specimens of the green snaketail *Ophiogomphus cecilia*,

➤ ICHTIOFAUNA

intentional, incidental killing, destruction of habitats or sanctuaries being breeding or feeding areas, and destroying, removing or damaging the spawning grounds, of the following species:

- white-finned gudgeon *Romanogobio albipinnatus* (3-5 spec.),
- spined loach *Cobitis taenia* (20 spec.),
- European weatherfish *Misgurnus fossilis* (5 spec.),
- European bitterling *Rhodeus amarus* (*Rhodeus sericeus*) (10 spec.),

➤ HERPETOFAUNA

deliberate, incidental killing, destruction of habitats or sanctuaries being the areas of breeding, rearing, resting and feeding, and the deliberate scaring off or disturbance, of the following species:

- sand lizard *Lacerta agilis* (5 spec.),
- grass snake *Natrix natrix* (5 spec.),
- common toad *Bufo bufo* (10 spec.),
- green frogs of *Pelophylax kl. Esculentus* phenotype (20 spec.),

➤ ORNITOFAUNA

deliberate scaring off or disturbance in night-time shelters, in breeding season in the breeding or rearing areas, or in feeding areas, of the following species:

- **breeding species within a buffer zone of 500 m from the project site:**
 - western marsh harrier *Circus aeruginosus* (2 spec.),
 - mute swan *Cygnus olor* (4 spec.),
 - bluethroat *Luscinia svecica* (4 spec.),
 - peewit *Vanellus xanellus* (4 spec.),
 - little ringed plover *Charadrius dubius* (4 spec.),
 - common cuckoo *Cuculus canorus* (4 spec.),
 - European stonechat *Saxicola rubicola* (4 spec.),
 - common grasshopper warbler *Locustella naevia* (4 spec.),
 - sedge warbler *Acrocephalus schoenobaenus* (4 spec.),
 - marsh warbler *Acrocephalus palustris* (4 spec.),
 - Eurasian reed warbler *Acrocephalus scirpaceus* (4 spec.),
 - great reed warbler *Acrocephalus arundinaceus* (4 spec.),
 - common whitethroat *Sylvia communis* (4 spec.),
 - red-backed shrike *Lanius collurio* (4 spec.),
 - yellowhammer *Emberiza citrinella* (4 spec.),
 - common reed bunting *Emberiza schoeniclus* (4 spec.),
 - corn bunting *Emberiza calandra* (4 spec.),
- **non-breeding (passing-by) species within a buffer zone of 500 m from the project site:**
 - common goldeneye *Bucephala clangula* (4 spec.),
 - cormorant *Phalacrocorax carbo* (4 spec.),
 - common coot *Mergus merganser* (4 spec.),
 - mute swan *Cygnus olor* (4 spec.),
 - white stork *Ciconia ciconia* (4 spec.),
 - black kite *Milvus migrans* (2 spec.),

- red kite *Milvus milvus* (2 spec.),
- white-tailed eagle *Haliaeetus albicilla* (2 spec.),
- common tern *Sterna hirundo* (4 spec.),
- common swift *Apus apus* (4 spec.),
- Eurasian hoopoe *Upupa epops* (4 spec.),
- black woodpecker *Dryocopus martius* (4 spec.),
- great spotted woodpecker *Dendrocopos major* (4 spec.),
- barn swallow *Hirundo rustica* (4 spec.),
- hooded crow *Corvus cornix* (4 spec.),
- common raven *Corvus corax* (4 spec.),
- common linnet *Linaria cannabina* (4 spec.),

➤ **TERIOFAUNA**

deliberate scaring off or disturbance of 2 specimens of the otter *Lutra Lutra*,

➤ **CHIROPTEROFAUNA**

deliberate scaring off or disturbance of 5 to 10 specimens of the following species:

- nathusius' pipistrelle *Pipistrellus nathusii*,
- common pipistrelle *Pipistrellus pipistrellus s. s.*,
- soprano pipistrelle *Pipistrellus pygmaeus*,
- common noctule *Nyctalus noctula*,
- serotine bat *Eptesicus serotinus*,
- mouse-eared bat belonging to *Myotis sp.*,

under the following conditions:

1. the aforesaid activities must be supervised by the Environmental Team of the civil works Contractor;
2. for ichtiofauna, the works must be carried out beyond the spawning and spawn incubation season (1 March to 30 June); the works that interfere in the river channel must be carried out only within the planned icebreaker mooring locations;
3. for herpetofauna, the works conducted to disturb the shore will be carried out between September and April, so during the lowest activity of reptiles and amphibians;

due to the need to implement the planned project, to be carried out as part of the Odra-Vistula Flood Management Project (OVFMP), and aimed at allowing safe and effective ice-breaking, titled 'The construction of docking-mooring infrastructure on Lower Odra River and on boundary sections of Odra River as well as new aids to navigation',

This permit is valid from 1 September 2020 to 31 December 2021.

I further oblige the Applicant to provide the Regional Director for Environmental Protection in Gorzów Wielkopolski with a report on the extent of using this permit, **until 31 January 2021** (for the period from 01/09/2020 to 31/12/2020), **and until 31 January 2022** (for the period from 01/01/2021 to 31/12/2021). The report must refer the number of this decision.

II. I hereby discontinue

the proceedings for issuing this decision, in the part concerning the following activities:

- 1) deliberate scaring off or disturbance of the wild animals marked with (1) in Appendices 1 and 2 to the Regulation of the Minister of Environment of 16 December 2016 on conservation of animal species, of the following species:
 - white-finned gudgeon *Romanogobio albipinnatus* (3-5 spec.),
 - spined loach *Cobitis taenia* (20 spec.),
 - European weatherfish *Misgurnus fossilis* (5 spec.),
 - European bitterling *Rhodeus amarus* (*Rhodeus sericeus*) (10 spec.),
- 2) destroying, removing or damaging the spawning grounds of the following species:
 - sand lizard *Lacerta agilis* (5 spec.),
 - grass snake *Natrix natrix* (5 spec.),
 - common toad *Bufo bufo* (10 spec.),
 - green frogs of *Pelophylax kl. Esculentus* phenotype (20 spec.),
- 3) deliberately preventing access to shelters and destroying the habitats or sanctuaries being the areas of breeding, rearing, resting, migration or feeding of the following species:
 - **breeding species within a buffer zone of 500 m from the project site:**
 - western marsh harrier *Circus aeruginosus* (2 spec.),
 - mute swan *Cygnus olor* (4 spec.),
 - bluethroat *Luscinia svecica* (4 spec.),
 - peewit *Vanellus xanellus* (4 spec.),
 - little ringed plover *Charadrius dubius* (4 spec.),
 - common cuckoo *Cuculus canorus* (4 spec.),
 - European stonechat *Saxicola rubicola* (4 spec.),
 - common grasshopper warbler *Locustella naevia* (4 spec.),
 - sedge warbler *Acrocephalus schoenobaenus* (4 spec.),
 - marsh warbler *Acrocephalus palustris* (4 spec.),
 - Eurasian reed warbler *Acrocephalus scirpaceus* (4 spec.),
 - great reed warbler *Acrocephalus arundinaceus* (4 spec.),
 - common whitethroat *Sylvia communis* (4 spec.),
 - red-backed shrike *Lanius collurio* (4 spec.),
 - yellowhammer *Emberiza citrinella* (4 spec.),
 - common reed bunting *Emberiza schoeniclus* (4 spec.),
 - corn bunting *Emberiza calandra* (4 spec.),
 - **non-breeding (passing-by) species within a buffer zone of 500 m from the project site:**
 - common goldeneye *Bucephala clangula* (4 spec.),
 - cormorant *Phalacrocorax carbo* (4 spec.),
 - common coot *Mergus merganser* (4 spec.),
 - mute swan *Cygnus olor* (4 spec.),
 - white stork *Ciconia ciconia* (4 spec.),
 - black kite *Milvus migrans* (2 spec.),
 - red kite *Milvus milvus* (2 spec.),
 - white-tailed eagle *Haliaeetus albicilla* (2 spec.),

- common tern *Sterna hirundo* (4 spec.),
 - common swift *Apus apus* (4 spec.),
 - Eurasian hoopoe *Upupa epops* (4 spec.),
 - black woodpecker *Dryocopus martius* (4 spec.),
 - great spotted woodpecker *Dendrocopos major* (4 spec.),
 - barn swallow *Hirundo rustica* (4 spec.),
 - hooded crow *Corvus cornix* (4 spec.),
 - common raven *Corvus corax* (4 spec.),
 - common linnet *Linaria cannabina* (4 spec.),
 - osprey *Pandion haliaetus* (2 spec.),
- 4) deliberate scaring off or disturbance in night-time shelters, in breeding season in the breeding or rearing areas, or in feeding areas, of the groups of migrating or wintering birds – for wild animals marked with (2) in Appendices 1 and 2 to the Regulation of the Minister of Environment of 16 December 2016 on conservation of animal species, of the non-breeding and passing-by species within a buffer zone of 500 m from the project site, that is 2 specimens of the osprey *Pandion haliaetus*, since the said proceedings have no grounds.

JUSTIFICATION

By the letter dated 10 May 2019, ref.: POPDOW-ZPT.071.1.2018 (received on 15 May 2019), supplemented with the correspondence of 10 June 2019, ref.: POPDOW-ZPT.071.1.1.2019 (received on 13 June 2019), Ms Krystyna Araszkiwicz of Sweco Consulting Sp. z o.o., ul. Łyskowskiego 16, 71-641 Szczecin, representing the investor, State Water Holding Polish Waters – Regional Water Management Board in Szczecin, ul. Tama Pomorzańska 13A, 70-030 Szczecin (letter of authorisation No.: SZ.ROO.012.98.2019.MG dated 28 May 2019), has applied to the Regional Director for Environmental Protection in Gorzów Wielkopolski for issuing the permit for deliberate killing and deliberate destruction of the eggs or growing forms of the specimens of the following species: common carder bee *Bombus pascuorum* (10 pcs.), buff-tailed bumblebee *Bombus terrestris* (10 pcs.), early bumblebee *Bombus pratorum* (10 pcs.), red-tailed bumblebee *Bombus lapidarium* (10 pcs.); for deliberate scaring off or disturbance – for the wild animals marked with (1) in Appendices 1 and 2 to the Regulation of the Minister of Environment of 16 December 2016 on conservation of animal species) – of 20 specimens of the green snaketail *Philogomphus cecilia*; for deliberate killing, destruction of habitats or sanctuaries being the sites of breeding, rearing, resting, migration or feeding; for destruction, removal or damaging of the spawning grounds, and deliberate scaring off or disturbance – for wild animals marked with (1) in Appendices 1 and 2 to the Regulation of the Minister of Environment of 16 December 2016 on conservation of animal species – of the following species: white-finned gudgeon *Romanogobio albipinnatus* (3–5 spec.), spined loach *Cobitis taenia* (20 spec.), weatherfish *Misgurnus fossilis* (5 spec.), European bitterling *Rhodeus amarus* (*Rhodeus sericeus*) (10 spec.); sand lizard *Lacerta agilis* (5 spec.), grass snake *Natrix natrix* (5 spec.), common toad *Bufo bufo* (10 spec.) and the green frogs of *Pelophylax kl. Esculentus* phenotype (20 spec.); deliberately preventing access to shelters and destroying the habitats or sanctuaries being the sites

of breeding, rearing, resting, migration or feeding, and deliberate scaring off or disturbance in night-time shelters, in breeding season in the breeding or rearing areas, or in feeding areas, of the groups of migrating or wintering birds – for wild animals marked with (2) in Appendices 1 and 2 to the Regulation of the Minister of Environment of 16 December 2016 on conservation of animal species – of the following breeding species within a buffer zone of 500 m from the project site: western marsh harrier *Circus aeruginosus* (2 spec.), mute swan *Cygnus olor* (4 spec.), bluethroat *Luscinia svecica* (4 spec.), peewit *Yanellus vanellus* (4 spec.), little ringed plover *Charadrius dubius* (4 spec.), common cuckoo *Cuculus canorus* (4 spec.), European stonechat *Saxicola rubicola* (4 spec.), common grasshopper warbler *Locustella naeria* (4 spec.), sedge warbler *Acrocephalus schoenobaenus* (4 spec.), marsh warbler *Acrocephalus palustris* (4 spec.), Eurasian reed warbler *Acrocephalus scirpaceus* (4 spec.), great reed warbler *Acrocephalus arundinaceus* (4 spec.), common whitethroat *Sylvia communis* (4 spec.), red-backed shrike *Lanius collurio* (4 spec.), yellowhammer *Emberiza citrinella* (4 spec.), common reed bunting *Emberiza schoeniclus* (4 spec.), corn bunting *Emberiza calandra* (4 spec.); and of the following non-breeding and passing-by species within a buffer zone of 500 m from the project site: common goldeneye *Bucephala clangula* (4 spec.), common coot *Mergus merganser* (4 spec.), mute swan *Cygnus olor* (4 spec.), white stork *Ciconia ciconia* (4 spec.), black kite *Milvus migrans* (2 spec.), red kite *Milvus milvus* (2 spec.), white-tailed eagle *Haliaeetus albicilla* (2 spec.), common tern *Sterna hirundo* (4 spec.), common swift *Apus apus* (4 spec.), Eurasian hoopoe *Upupa epops* (4 spec.), black woodpecker *Dryocopus martius* (4 spec.), great spotted woodpecker *Dendrocopos major* (4 spec.), barn swallow *Hirundo rustica* (4 spec.), common linnet *Linaria cannabina* (4 spec.), cormorant *Phalacrocorax carbo* (4 spec.), hooded crow *Corvus cornix* (4 spec.), common raven *Corvus corax* (4 spec.) and osprey *Pandion haliaetus* (2 spec.); deliberate scaring off or disturbance – for the wild animals marked with (1) in Appendices 1 and 2 to the Regulation of the Minister of Environment of 16 December 2016 on conservation of animal species – of the following species: otter *Lutra lutra* (2 spec.), nathusius' pipistrelle *Pipistrellus nathusii* (5–10 specimens), common pipistrelle *Pipistrellus pipistrellus* s.s. (5–10 spec.), soprano pipistrelle *Pipistrellus pygmaeus* (5–10 spec.), common noctule *Nyctalus noctula* (5–10 spec.), serotine bat *Eptesicus serotinus* (5–10 spec.), mouse-eared bat belonging to *Myotis* sp. (5–10 spec.), due to the need to implement the planned project, to be carried out as part of the Flood Protection Project for the Oder and the Vistula Catchment Areas (OVFMP), and aimed at allowing safe and effective ice-breaking, titled ‘*The construction of docking-mooring infrastructure on Lower Odra River and on boundary sections of Odra River as well as new aids to navigation*’, which covers the construction of icebreaker mooring facilities (having the form of dolphins located beyond the waterway boundary) in 7 independent locations at the section of the Oder river from the Nysa Łużycka to Szczecin, and the installation of new waterway signs (the application refers to the project titled ‘*The construction of docking-mooring infrastructure on Lower Odra River and on boundary sections of Odra River as well as new aids to navigation at km 548.4 of Oder river*’ in Biała Góra, Cybinka commune), in the period as per the construction works schedule: from 09/2020 to 31/12/2021.

The Regional Director for Environmental Protection in Gorzów Wielkopolski, by his letter dated 18 June 2019, ref.: WPN-I.6401.226.2019.KS, notified the Applicant of the party's right to read and take a stance on the collected evidence and materials, before issuing the decision

in the case, pursuant to Article 10(1) of the Code of Administrative Proceedings of 14 June 1960. In the course of the proceedings, the party did not exercise that right and did not file any comments.

In accordance with Appendices 1 and 2 to the Regulation of the Minister of Environment of 16 December 2016 on conservation of animal species, the green snaketail *Phiogomphus cecilia*, western marsh harrier *Circus aeruginosus*, mute swan *Cygnus olor*, bluethroat *Luscinia svecica*, peewit *Yanellus xanellus*, little ringed plover *Charadrius dubius*, common cuckoo *Cuculus canorus*, European stonechat *Saxicola rubicola*, common grasshopper warbler *Locustella naevia*, sedge warbler *Acrocephalus schoenobaenus*, marsh warbler *Acrocephalus palustris*, Eurasian reed warbler *Acrocephalus scirpaceus*, great reed warbler *Acrocephalus arundinaceus*, common whitethroat *Sylvia communis*, red-backed shrike *Lanius collurio*, yellowhammer *Emberiza citrinella*, common reed bunting *Emberiza schoeniclus*, corn bunting *Emberiza calandra*, common goldeneye *Bucephala clangula*, common coot *Mergus merganser*, white stork *Ciconia ciconia*, black kite *Milvus migrans*, red kite *Milvus milvus*, white-tailed eagle *Haliaeetus albicilla*, common tern *Sterna hirundo*, common swift *Apus apus*, Eurasian hoopoe *Upupa epops*, black woodpecker *Dryocopus martius*, great spotted woodpecker *Dendrocopos major*, barn swallow *Hirundo rustica*, common linnet *Linaria cannabina*, osprey *Pandion haliaetus*, nathusius' pipistrelle *Pipistrellus nathusii*, common pipistrelle *Pipistrellus pipistrellus s. s.*, soprano pipistrelle *Pipistrellus pygmaeus*, common noctule *Nyctalus noctula*, serotine bat *Eptesicus serotinus* and the mouse-eared bat belonging to *Myotis sp.* are under strict protection. The common carder bee *Bombus pascuorum*, buff-tailed bumblebee *Bombus terrestris*, red-tailed bumblebee *Bombus lapidarius*, early bumblebee *Bombus pratorum*, white-finned gudgeon *Romanogobio albipinnatus*, spined loach *Cobitis taenia*, weatherfish *Misgurnus fossilis*, European bitterling *Rhodeus amarus (Rhodeus sericeus)*, common toad *Bufo bufo*, sand lizard *Lacerta agilis*, grass snake *Natrix natrix*, the green frogs of *Pelophylax kl. Esculentus*, phenotype, hooded crow *Corvus cornix*, cormorant *Phalacrocorax carbo*, common raven *Corvus corax* and otter *Lutra Lutra* are under partial protection.

Pursuant to Article 52(1) items 1, 3, 7, 8, 12 and 13 of the Nature Conservation Act of 16 April 2004, with regard to the protected wild animals, deliberate killing; deliberate destruction of eggs, young specimens or growing forms; destruction of habitats or sanctuaries being their sites of breeding, rearing, resting, migration or feeding; destruction, removal or damaging nests, formicaries, burrows, dens, lodges, dams, spawning grounds, winter habitats or other shelters; deliberate scaring off or disturbance; and deliberate scaring off or disturbance in night-time shelters, in breeding season in breeding or rearing areas, or in feeding areas, of the groups of migrating or wintering birds, is forbidden. The foregoing has been specified in § 6 section 1 items 1, 3, 7 and 8, and sections 2 and 3 of Regulation of the Minister of Environment on conservation of animal species.

Pursuant to Article 56(2)(1) and (2) of the Nature Conservation Act of 16 April 2004, the Regional Director for Environmental Protection, within his jurisdiction, may, for the species under strict and partial protection, allow for performing the actions banned under Article 52(1) items 1, 3, 7, 8, 12 and 13, that is for deliberate killing; deliberate destruction of eggs, young specimens or growing forms; destruction of habitats or sanctuaries being their sites of breeding,

rearing, resting, migration or feeding; destruction, removal or damaging nests, formicaries, burrows, dens, lodges, dams, spawning grounds, winter habitats or other shelters; deliberate scaring off or disturbance; and deliberate scaring off or disturbance in night-time shelters, in breeding season in breeding or rearing areas, or in feeding areas, of the groups of migrating or wintering birds. The foregoing has been specified in § 6 section 1 items 1, 3, 7 and 8, and sections 2 and 3 of the said Regulation.

In accordance with Article 56(4)(3), (6) and (7) of the cited Nature Conservation Act, the Regional Director for Environmental Protection, within his jurisdiction, may, in the absence of alternative solutions and if this does not cause a hazard to the wild populations of the protected animal species, allow for derogations from the prohibitions specified in Article 52(1), if the derogations serve for public health or safety, or arise from essential requirements of overriding public interest, including social or economic requirements, or requirements that bring beneficial consequences of primary importance for the environment, or arise from a legitimate interest of a party or from essential requirements of overriding public interest, including social or economic requirements, or requirements that bring beneficial consequences of primary importance for the environment; and if one of the conditions listed in Article 56(4) items 1 to 7 is fulfilled.

While analysing this case, I have considered the fact that the site identified by the Applicant is covered by the Natura 2000 areas 'The Middle Oder Valley' (PLB080004) and 'The Krosno Oder Valley' (PLH080028). In addition, the analysed area includes Krzesiny Landscape Park, referred to in Article 6(1)(3) of the cited Nature Conservation Act.

In accordance with § 6(2) and Appendix 2 to the Regulation of the Minister of Environment on conservation of animal species, the white-finned gudgeon *Romanogobio alpinus*, spined loach *Cobitis taenia*, weatherfish *Misgurnus fossilis* and European bitterling *Rhodeus amarus* (*Rhodeus sericeus*) are not marked with any of the symbols, so they are not subject to the additional ban on scaring off or disturbance. The ban specified in the application only applies to the species marked with (1) in the said appendix. Additionally, in accordance with § 6(2) and Appendix 1 to the cited Regulation, the osprey *Pandion haliaetus* is marked with symbols (1) and (3). With regard to the wild animals marked with (1) and (3) in Appendix 1 to the Regulation, there is an additional ban on deliberate scaring off or disturbance. The ban specified in the application applies to the bird species marked with (2). With regard to the sand lizard *Lacerta agilis*, grass snake *Natrix natrix*, common toad *Bufo bufo* and the green frogs of *Pelophylax kl. Esculentus* phenotype, the ban on destruction, removal or damaging the spawning grounds only applies to fish species. Furthermore, having analysed the application for the specified actions, that is the deliberate prevention of access to shelters and destroying the habitats or sanctuaries being the sites of breeding, rearing, resting, migration or feeding; deliberate scaring off or disturbance in night-time shelters, in breeding season in the breeding or rearing areas, or in feeding areas, of the groups of migrating birds or wintering breeding birds, within a buffer zone of 500 m from the project site, which includes: western marsh harrier *Circus aeruginosus*, mute swan *Cygnus olor*, bluethroat *Luscinia svecica*, peewit *Yanellus xanellus*, little ringed plover *Charadrius dubius*, common cuckoo *Cuculus canorus*, European stonechat *Saxicola rubicola*, common grasshopper warbler *Locustella naevia*, sedge warbler *Acrocephalus schoenobaenus*, marsh warbler *Acrocephalus palustris*, Eurasian reed warbler *Acrocephalus*

scirpaceus, great reed warbler *Acrocephalus arundinaceus*, common whitethroat *Sylvia communis*, red-backed shrike *Lanius collurio*, yellowhammer *Emberiza citrinella*, common reed bunting *Emberiza schoeniclus*, corn bunting *Emberiza calandra*; and of the following non-breeding species passing by within a buffer zone of 500 m from the project site: common goldeneye *Bucephala clangula*, cormorant *Phalacrocorax carbo*, common coot *Mergus merganser*, white stork *Ciconia ciconia*, black kite *Milvus migrans*, red kite *Milvus milvus*, white-tailed eagle *Haliaeetus albicilla*, common tern *Sterna hirundo*, common swift *Apus apus*, Eurasian hoopoe *Upupa epops*, black woodpecker *Dryocopus martius*, great spotted woodpecker *Dendrocopos major*, barn swallow *Hirundo rustica*, hooded crow *Corvus cornix*, common raven *Corvus corax*, common linnet *Linaria cannabina*, osprey *Pandion haliaetus*, and taking into account the methods of carrying out the said actions, as declared by the Applicant, I have considered these actions to be unreasonable. It should be noted that, in the light of Article 5(18) of the Nature Conservation Act, a habitat of plants, animals or fungi shall be defined as an area where such plants, animals or fungi exist throughout their life or at any stage of growth. In consequence, each instance where the works restrict access for the above-mentioned bird species to their sites of breeding, rearing, resting, migration or feeding should be classified as destruction of the habitats of these species, and thus as an infringement of the ban referred to in Article 52(1)(7) of the Nature Conservation Act. Pursuant to Article 56(2)(2) of the cited Act, such works may only be carried out upon approval by the Regional Director for Environmental Protection. In this case, the Applicant has indicated that the destruction of habitats and sanctuaries will occur due to local and limited occupation of a bank section in order to build the exit to the shore, or due to the probable dredging works. This is not equivalent to the destruction of habitats. As regards preventing the access of birds to their shelters, there are also no conditions which would indicate that the said species of birds will have no access to those shelters. The Applicant has only pointed out that this action will be short and temporary, and will be performed only during the works. Therefore, there are no grounds to conclude that the birds will be actually prevented from accessing their shelters. Given the foregoing, and pursuant to Article 105(1) of the Code of Administrative Proceedings, I have discontinued the proceedings in the part regarding the permit for exemption from the said bans for the aforementioned species, as it has no merits.

According to the application, the actions applied for are necessary to implement the planned project, to be carried out as part of the Odra-Vistula Flood Management Project (OVFMP), and aimed at allowing safe and effective ice-breaking, titled '*The construction of docking-mooring infrastructure on Lower Odra River and on boundary sections of Odra River as well as new aids to navigation*', which covers the construction of icebreaker mooring facilities (having the form of dolphins located beyond the waterway boundary) in 7 independent locations at the section of the Oder river from the Nysa Łużycka to Szczecin, and the installation of new waterway signs. The application refers to the project titled '*The construction of docking-mooring infrastructure on Lower Odra River and on boundary sections of Odra River as well as new aids to navigation at km 548.4 of Oder river*' in Biała Góra, Cybinka commune. The investor is the National Water Management Authority – Regional Water Management Board in Szczecin. According to the application, the project involves the construction of mooring facilities at the lower and border Oder river, and new waterway signage, and has been included in the strategic

document regarding flood protection, titled '*Flood Risk Management Plan for the Oder River Catchment Area*' (FRMP). The Applicant has indicated that the main objective of the FRMP is to mitigate the possible adverse effects of flooding on human life and health, the environment, cultural heritage and business activity, by taking actions to minimise the identified threats. The actions will, for example, reduce the losses due to flooding. For the entomofauna and ichtiofauna, the actions will be carried out during the works covered by the project, for instance while performing the works which only involve the vibration hammering of an open-end steel pipe with a soil plug created inside and the remainder filled with sand, as well as during related works which must be carried out from water. The destruction of habitats or sanctuaries of bird species and the deliberate scaring off and disturbance will mostly occur during construction, due to human presence and the noise emitted by operating construction equipment. The loss of breeding sites will be caused by demolition of the existing footbridge and the erection of a new one. For chiroptero-fauna, the actions applied for will mostly occur due to human presence, the noise emitted by operating construction equipment, and the equipment used to illuminate the construction site (if the works must be carried out also at night). The deliberate killing of the specimens of herpetofauna, as well as the destruction of habitats, will be caused by destroying a part of the oxbow situated between the embankment of national road DK31 and the mouth of the Postomia river, reducing the area of the oxbow, and deteriorating its supply conditions by the water coming from the Postomia river, due to building a temporary road embankment, as well as by incidental events where the specimens will be accidentally killed after entering the construction site. For grass snakes and lizards, there is a risk of scaring off, incidental killing, temporary restriction of access to feed or temporary forcing out of the sites. The Applicant has indicated the recommended mitigating measures, that is to design and implement the project in a way allowing a free flow of water from the Warta and the Postomia rivers to the oxbow located south from the footbridge, and to protect the sites of amphibians (oxbow, ponds) against being covered by the sliding deforested road embankment. According to the application, the locations of the dolphins to be built as part of the project (including the mooring facility covered by the application) were chosen upon consultation with a wide group of stakeholders, conducted by the State Water Holding Polish Waters – Regional Water Management Board in Szczecin. As regards the environment, the location of dolphins at virtually any section of the Oder river implies a very similar scope of impacts, so no location variants have been presented. The locations selected during the consultations, composing the whole system of mooring facilities for icebreakers, make up a well-thought arrangement which allows for safe and effective ice-breaking operations. Following the proven approach, if there is no extraordinary threat, the daily amount of ice broken on the border Oder river should not exceed a length of approx. 20 km. Once the new mooring facilities are built, the average distance between the mooring places will be 12.6 km, which will allow the icebreakers to work upstream after assessing the risk of icing existing upstream of the place where the operations were completed. This is particularly important where the water level goes down after breaking the ice, and the icebreakers, in order to continue their work on the following days, find it difficult to approach the face of the remaining ice cover. Considering the local conditions, the location of the mooring facility in Biała Góra has been selected as optimal for icebreakers to moor during their ice-breaking operations. Presently, mooring is allowed at km

548.4, at the bank on the Polish side. That location enables the construction of a mooring line which may only serve as a berth. Less than a hundred metres from the bank, there is a right-bank levee, whose crest is a foundation for a road made of concrete slabs. The terrace only includes formed earth roads, but during the site inspection none of these roads directly linked the bank, at the planned mooring line, with the crest of the levee. The Applicant has indicated that it is not plan to generate a long-term impact that would endanger the continuity of population of insects or materially reduce their number. The habitat of these species will not be significantly altered, the species are resistant to such changes and are common in the surroundings of the project site, which are not to be altered, and additionally the works will generally be carried out from the water side, which will limit the interference in the existing feeding grounds and nesting sites of bumblebees. The project will also not create any long-term impact that would endanger the continuity of population or significantly reduce the number of fish, amphibians, reptiles and bats. The habitats of the species in question will not be materially altered, and additionally the species are resistant to such changes and are common in the surroundings of the project site, which are not to be altered. The Applicant has also indicated that the condition of the habitats of frogs, grass snakes and lizards will be probably restored after completing the overhaul works and removing the provisional footbridge. The actions applied for will be under responsibility of the construction works Contractor, who will appoint an in-house Environmental Team. As stated in the application, the deliberate scaring off or disturbance will be caused by the works, equipment operation, the noise and vibrations emitted during the works, and the presence of humans. The deliberate killing will be implied by incidental events which may occur during the works. The destruction of habitats or sanctuaries being the sites of breeding, rearing, resting, migration or feeding will occur due to local and limited occupation of a bank section in order to build the exit to the shore, or due to the probable dredging works. The deliberate killing of eggs or growing forms will be due to the construction of the footbridge exit. The Applicant has indicated that the application is based on environmental surveys conducted on the project site and in its immediate vicinity. It covers all the species which have used the area and were detected in the site inspections, as well as those which are very likely to exist in the area but were not detected in the survey (such as the sand lizard or the grass snake). Considering the planned execution period, to minimise the risk of work suspension, the application preventively contains the species discovered during the survey, including those existing within the buffer zone.

In this case, given the location and scope of the actions applied for, there is no alternative solution to carry out these actions. Furthermore, the conditions specified in the introduction impose appropriate requirements regarding the protection of the aforementioned species during project execution, in order to maintain their local populations in a favourable conservation status.

Considering the foregoing, pursuant to the requirement laid down in Article 56(4) items 3, 6 and 7 of the Nature Conservation Act, which sets conditions for the Regional Director for Environmental Protection in Gorzów Wielkopolski to issue the requested permit, I have decided to issue the said permit.

With the above in mind, I rule as stated.

INSTRUCTION

Pursuant to Article 130(4) of the Code of Administrative Proceedings, a decision shall be enforceable before the expiry of the term to lodge an appeal if it accepts the requests of all parties.

This decision is appealable – pursuant to Article 127(2) of the Code of Administrative Proceedings, a party may appeal to the General Director for Environmental Protection, through the Regional Director for Environmental Protection in Gorzów Wielkopolski, within 14 days of the date the decision was served.

Please also be advised that pursuant to Article 127a (1) of the Code of Administrative Proceedings, during the time for submitting the appeal, a Party may waive the right to appeal against the public administration authority which issued the permit. The statement of waiver of the right to appeal shall be lodged with the Regional Director for Environmental Protection in Gorzów Wielkopolski. The decision shall become final and binding on the date the public administration authority receives the statement of waiver of the right to appeal from the last of the Parties to the proceedings.

To implement the permit, the Regional Director for Environmental Protection in Gorzów Wielkopolski shall check whether the Applicant fulfils the conditions specified in the permit, and shall withdraw the permit if the conditions are not fulfilled, pursuant to Article 56(7a) and (7i) of the Nature Conservation Act.

Please also note that if any plants, fungi or animals, other than those listed herein, are discovered while commencing and executing the works, or in the event of violating any bans other than those referred to herein, it is required to obtain an additional permit by the Regional Director for Environmental Protection for exemption from the bans listed in Article 51(1) and Article 52(1) of the Nature Conservation Act.

This permit does not exempt from compliance with other provisions, including those set forth in the Civil Code of 23 April 1964 (consolidated text: Polish Journal of Laws 2019, item 1145). Consequently, before entering the real property, it is required to obtain a relevant consent by the person authorised (owner or manager).

On 07/05/2019 the Applicant paid a stamp duty of PLN 82.00 (eighty-two Zloty and 00/100) for the application for the permit to carry out the actions banned under Article 56(2) of the Nature Conservation Act of 16 April 2004 (Polish Journal of Laws 2018, item 1614, as amended), and on 07/06/2019 he paid a stamp duty of PLN 17.00 (seventeen Zloty and 00/100) for the power of attorney, to the account of the Municipal Office of Gorzów Wlkp.: 44 1020 5402 0000 0302 0325 6575.

Kamila Strzesak
Nature Protection Inspector

<small>P.p. Regional Director for Environmental Protection in Gorzów Wielkopolski Andrzej Korzeniowski Deputy Regional Director for Environmental Protection Regional Nature Conservation Officer in Gorzów Wielkopolski</small>
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Recipients:

1. Ms Krystyna Araszkiwicz of Sweco Consulting Sp. z o.o., ul. Łyskowskiego 16, 71- 641 Szczecin
2. To files.