

ABOUT THE WORKS CONTRACT



The OVFM Project is co-funded using financial resources provided by the International Bank for Reconstruction and Development (also referred to as the World Bank), Council of Europe Development Bank, and at support of the European Union Cohesion Fund (IEOP 2014 – 2020), and the State Budget.

The supreme purpose of the Contract titled “3D.2/2 - Expansion of the left and right embankment of the Biala River in the Tarnow Municipality and the City of Tarnow” is to protect human lives and assets against the effects of floods at the right-bank part and at the left-bank part of Tarnów, and localities of Biała and Komorów, as the Works Contract is an addition to the works associated with the development of embankments for the River Biała to be constructed under Contract 3D.2/1, and it would allow for the complex flood protection for the area located in the downstream reach of the River Biała.

The planned works contain extension of the existing embankments, including raising, widening, and sealing of the embankment body and the subbase over a length of about 12.470 km (including the left embankment over a length of about 5.995 km, and the right embankment over a length of about 6.475 km), and the development of a new section of the left embankment over a length of about 80 m, and connecting it to the existing road embankment at Krakowska Street, as well as the development of a new section of the right embankment over a length of about 300 m and joining it with the existing embankment.

The extension of embankments is also related to the construction of service roads and to the extension of entry roads, descend roads, and embankment crossings, and the entire infrastructure associated with the embankment.



We encourage people, who would like to receive additional information on the Works Contract, to contact us.

INQUIRY OFFICE FOR PROJECT AFFECTED PERSONS:

✓ Directly or by phone:

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✓ Via post to the address given above.

✓ Hotline:
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jrp.krakow@wody.gov.pl



**Państwowe
Gospodarstwo Wodne
Wody Polskie**

FACTSHEET

**for people living in areas covered by
implementation of the Works
Contract titled
3D.2/2 – Expansion of the left and right
embankment of the Biala River in the
Tarnow Municipality and the City of
Tarnow**

UNIT RESPONSIBLE FOR IMPLEMENTATION – THE INVESTOR

State Water Holding Polish Waters (PGW WP)
Regional Water Management Authority in Cracow
22. Marszałka J. Piłsudskiego Street
31-109 Cracow

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This Works Contract is located at the right-bank part and at the left-bank part of Tarnów, and localities of Biała and Komorów, and implemented as an element of the Odra-Vistula Flood Management Project under Subcomponent 3D: *Passive and Active Protection in San Basin*

QUESTIONS AND ANSWERS

WHO IS THE INVESTOR?

The Investor for the Contract is the State Water Holding Polish Waters – Regional Water Management Authority in Cracow.

WHEN WILL THE REAL PROPERTY PURCHASE PROCEDURE FOR INVESTMENT PURPOSES START?

The real property purchase procedure connected with implementation of the Contract shall start on the day the State Water Holding Polish Waters – Regional Water Management Authority in Cracow applies to the Lesser Poland Governor for issuing a Decision on the investment project implementation permit as regards the flood protection facilities, hereinafter referred to as IPIP. The application shall contain the specification of proposed investment boundaries and maps containing real property splitting plans enclosed thereto. The Lesser Poland Governor is to issue the IPIP within 90 days. From the moment of commencing the proceeding, the owner shall be obliged to inform the Governor about any changes related to the property.

The IPIP decision shall approve the real property splitting and shall determine the plots to become, by virtue of law, the property of the State Treasury on the day when the decision becomes final. From that moment on the previous owner cannot administer the property or its part, which became a property of the State Treasury, e.g. the owner can neither sell the property acquired for the purpose of contract implementation nor establish life estate right, mortgage, easement or other limited property rights.

The previous owners shall not receive the IPIP decision itself (as it is usually extremely extensive and includes lots of appendices), but only a notice of issuing it, which is sent to the address specified in the cadaster.

Therefore, owners and holders of perpetual usufruct rights should keep their address data in the land and property register updated. If the data is not up-to-date, they may not find out about ongoing proceedings and about the issuance of the IPIP decision.

Owners and holders of perpetual usufruct rights are entitled to compensations for expropriation. In addition, for the persons who – within 30 days from the day of receiving the notice of issuing the IPIP decision – appear in RZGW in Cracow or send a declaration and hand over the real property, the compensation for expropriation of real property shall be increased by 5%.

WHAT IS THE WAY OF DETERMINING AND PAYING THE COMPENSATION FOR EXPROPRIATED REAL PROPERTIES?

The value of compensation is determined in the course of agreements made between the investor and the previous owner or holder of perpetual usufruct rights. **The compensation is paid by the SWH PW – RZGW in Cracow.** The date of payment is specified in the agreement made by the parties.

If the compensation is not determined within 2 months from the day on which the IPIP decision becomes final, it shall be determined by the Lesser Poland Governor by virtue of decision. In such a case, the compensation is paid within **14 days** from the day on which the decision about determination of the value of compensation becomes final.

If owner or holder of perpetual usufruct rights of real property appeals from the decision determining the value of compensation, they shall be paid, at their request, the amount specified in the decision (undisputable amount of compensation). Payment of that amount does not affect the ongoing appeal proceedings.

HOW IS THE AMOUNT OF COMPENSATION DETERMINED?

The principles set forth in the act on real property management apply to determine the amount of compensation.

The amount of compensation is determined by certified appraisers, on the basis of the market value (and, if it cannot be determined, on the basis of replacement value) of real property as of the day of issuing the IPIP decision, what means that any expenditures and costs incurred by the owner after issuance of the IPIP decision shall not be considered when determining the value of compensation.



The compensation due to the previous owners or holders of perpetual usufruct rights shall be reduced by the amount of limited property rights established on the real properties.

The amount of compensation is determined according to the status of the property as of the day of IPIP issuance, but according to the property value on the day when the compensation amount is established.

As part of the compensation, the former owner may be granted a replacement real property.

Cash compensations shall be granted, if:

- the acquisition of a real property or its part does not influence the possibility of using the real property for its former purposes;
- the Project Affected Person on whom the Project has an economic impact expresses their will to receive cash compensation;
- there are no similar real properties with an equivalent productive potential and market value present on the market, which prevents “land-for-land” compensation.

In case of “land for land” compensation form, the difference between the amount of compensation determined in the decision and the value of replacement real property is settled in the form of cash supplement.

Compensation may be determined in favour of the previous owners of real properties, holders of perpetual usufruct rights or persons who hold limited property rights to such properties (e.g. usufruct, personal easement, land easement or mortgage). That results from the fact that the IPIP not only deprives of ownership or perpetual usufruct right, but also causes extinction of limited property rights.

All persons entitled to compensation, i.e. the previous real property owners, holders of perpetual usufruct rights and persons who held limited property rights to such properties, as well as SWH PW - RZGW in Cracow participate in the proceedings as the parties. Therefore, they have at their disposal a number of legal instruments with which they can affect the amount of compensation.

WHAT HAPPENS IF ONLY A PART OF REAL PROPERTY WAS EXPROPRIATED BUT THE REMAINING PART SHALL NOT BE SUITABLE FOR PROPER USE FOR PRESENT PURPOSES (THE SO-CALLED REMNANT REMAINS)?

If only a part of real property was acquired for purposes of the Investment implementation and the remaining part, the so-called remnant, is not suitable for proper use for the present purposes, SWH PW - RZGW in Cracow is obliged to purchase it upon the motion of the owners. When submitting the motion for remnant purchase by SWH PW – RZGW in Cracow, it is necessary to remember that the motion has to contain justification why the part of the real property which was not acquired is not suitable for proper use for present purposes. A copy of cadastral map with the remnant marked should be enclosed to the application.

The motion for purchasing the remnant by SWH PW – RZGW in Cracow shall be assessed by a committee appointed by the Investor.

In case of decision to purchase the remnant, SWH PW - RZGW in Cracow shall engage an independent certified property appraiser to value such a real estate. The appraiser's opinion shall be available to the applicant holding a legal title to the remnant, who would be able to study it and, if necessary, raise remarks to it.

After holding negotiations regarding the amount of compensation for the remnant, an agreement shall be concluded for the remnant purchase, in the form of a notarial deed.

If an owner or holder of perpetual usufruct rights fail to reach an agreement with SWH PW - RZGW in Cracow as regards the remnant purchase or the value of compensation, they may bring an action before civil court.

WHAT DOES PERMANENT RESTRICTION IN USE OF A PROPERTY MEAN?

A permanent restriction in use of a property is established under the IPIP decision for the properties, which do not become properties of the State Treasury, but are entirely or partially necessary for use of the investment.

Limitations and related inconveniences, and limitation of economic and market potential of the properties (e.g. a development ban, ban to plant trees or to form, etc.) affect the market value of the properties adversely, and shall be compensated via fair compensation established by certified property appraisers.

If the owner or the holder of perpetual usufruct rights would deem that the property, where permanent limitation in use was established, is useless, they may request for its purchase through a civil-law agreement through providing the Investor with an application within 90 days from the day of notifying about the commencement of proceeding on the issuance of IPIP, in accordance with Article 22 (2) of the Special Flood Act (the purchase cannot be requested by owners of properties, where public roads are located, i.e. by units of local authorities of by the State Treasury). The purchase procedure for those properties is the same as in case of the purchase of remnants.

WHAT HAPPENS IF THE EXPROPRIATED PROPERTY IS SUBSIDIZED?

Expropriation of subsidized properties and properties covered by support programs may cause inability to fulfil liabilities given under particular programs, as accepted by the farmer in agreements with a certified state payment agency, i.e. Agricultural Restructuring and Modernization Agency (ARMA). This in turn may relate to determined consequences, including the necessity of returning the obtained payment and administrative penalties.

A solution for that problem is implementation – on the European Union's regulation level – of a special mechanism and of a definition of so-called force majeure, which obviously disables the farmer from fulfilling the contractual liabilities. Those provisions contain an opened catalogue of cases, when we face the force majeure. That catalogue includes the following as manifestation of force majeure, e.g. property expropriation. In order to apply that mode, initiative of the farmer/beneficiary is however necessary. They need to notify the District ARMA Office Manager about the occurrence of force majeure (in that case: expropriation and/or permanent restriction in the use of properties) in writing, along with relevant evidence (a copy of IPIP decision), within 15 working days counted from the day when they or a person authorized by them are able to perform that action (in case of RDP 2007-2013 and 2014-2020 that deadline amounted to 10 working days).

CAN A REAL PROPERTY BE USED AFTER ISSUANCE OF THE IPIP DECISION?

The IPIP decision specifies the date of respectively releasing the real property or releasing the real property and emptying apartments and other spaces.

If expropriated real property is developed with a residential building or a building in which separate residential premises was established, SWH PW - RZGW in Cracow is obliged to indicate a replacement accommodation.

Every expropriated person shall be entitled to use the land free of charge in the former manner till the moment of receiving the compensation or (if no agreement was reached on the amount of compensation) its undisputed part.

Release of real property shall take place after harvesting the current cultivations, in case of plots on which agricultural activity is performed in a given vegetation year attributed to given cultivation. If the cultivations are not harvested, a cash equivalent shall be paid (owners shall be informed in a separate note about a necessity of handing the properties over).

If owners do not give consent to release property, to empty apartments and other spaces, they may be coerced to do so, in the course of execution of administrative decision. The execution is conducted by the Governor who previously issued the IPIP decision.