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## GOVERNANCE OF PUBLICLY OWNED LAKES IN POLAND – THE CURRENT STATE AND UNDERLYING CONDITIONS

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**ABSTRACT:** Lakes are water resources which perform unique ecological, recreational and landscape-related functions. Sustaining and enhancing this multi-functional character of lakes while preserving the high quality of lake waters should be the principal objective of lake management. In Poland, we still lack a management strategy that would take into consideration the specific nature of lakes. Audits of the Supreme Audit Office (NIK) have demonstrated that the performance of basic tasks stipulated by law and pertaining to the governance of lakes by Regional Water Management Boards and by Marshalls of Voivodships leaves much to be desired. Irregularities and cases of negligence include, inter alia, the widespread practice of barring the public access to the lakes, lawless construction, and the lack of a current water cadastre. In the draft of a new Water Law, public administration is once again entrusted with the entire governance of inland waters. In the draft of a new Water Law, public administration is once again entrusted with the entire governance of inland waters. Meanwhile, the experience of other countries suggests that decentralization and participation of other interested parties, including community and non-government organizations, makes lake management more efficient.

**KEY WORDS:** ownership rights to lakes, governance of lakes

## Introduction

Among other European countries, Poland is distinguished by a relatively high number of lakes. It is estimated to have 7,081 lakes with an area above 1 ha, covering in total 2,814 km<sup>2</sup>, which corresponds to 1% of the country's area (Choimski, 2013). Most lakes lie in the northern belt of lake districts, and they are most numerous in the Land of Great Masurian Lakes, where they make up about 24% of the region's surface area (Lossow, 2011).

There are 2,856 lakes in Poland which are over 10 ha in size. They accumulate 18.2 billion m<sup>3</sup> of water, which is five-fold more than the total capacity of all water retention reservoirs in our country. In turn, the water-holding capacity of the lakes seems minimal when compared to the groundwater resources, estimated to reach 6,000 billion m<sup>3</sup> (Krajowy Zarząd Gospodarki Wodnej, 2010). Drawing water is one of the potential services offered by lakes and other surface water ecosystems (Rauba, 2014, p. 251). Other functions offer much higher social and economic benefits, for example recreational opportunities, ecological and landscape-related attributes, as well as fisheries. The maintenance and development of the multi-functional character of lakes while preserving the required high quality of lake waters should be the principal objective in the governance of public lakes. The up-to-date experience regarding the management publicly owned lakes in Poland highlights the absence of a strategy that would take into account the specific character of lake governance (Turkowski, 2017).

The purpose of this article is to present the current state of the governance of public lakes in Poland, to identify the underlying legal and administrative conditions and to bring to light the basic problems and their causes. The information from audits concerning the management of public lakes conducted by the Supreme Audit Office (NIK) in 2011–2015 were used in the paper.

## Governance, ownership and ownership rights to lakes

The superior act of law regulating the use of waters in Poland is the Water Law(2001). It stipulates the major objectives of water resource management, including that ones that are essential from the point of view of lake governance:

- protection of water resources from pollution as well as inappropriate or excessive exploitation;
- maintenance or improvement of the condition of water and water-dependent ecosystems;

- satisfying the demand associated with tourism, sport and recreation;
- creating conditions for using lake waters for fisheries.

In contrast to the Framework Water Directive (UE, 2000), which unambiguously defines lakes as stagnant waters, the Polish Water Law discriminates between lakes as flowing or stagnant water bodies (figure 1).

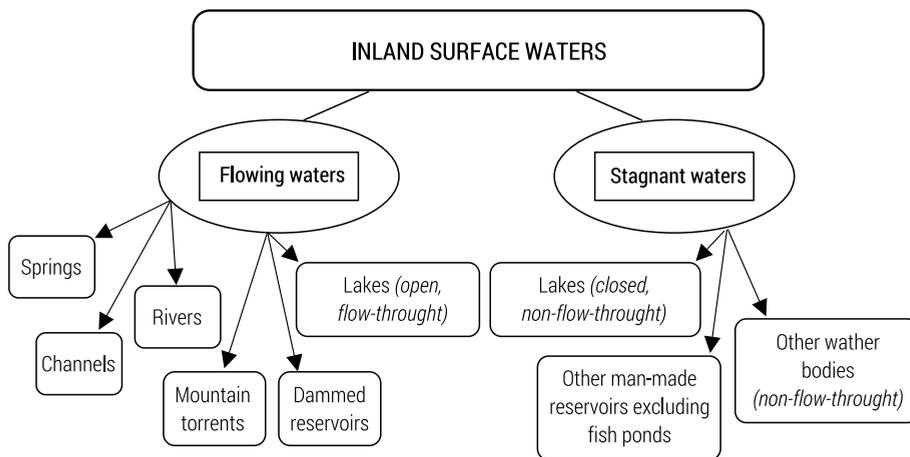


Figure 1. Inland surface waters according to Water Law (2001)

Source: (Turkowski, 2014, p. 17).

Flowing water bodies include lakes with permanent or periodical inflow or outflow of surface waters, while stagnant ones are lakes not connected directly and naturally with surface flowing waters.

Lakes classified as flowing waters belong to the State Treasury and are publicly owned property. The land under a flow-through lake, within its shorelines, belongs to the owner of the said lake and is excluded from the real estate trading governed by civil law. In turn, lakes classified as stagnant waters belong to owners of the real estate property in limits of which the lakes are situated. Lakes classified as stagnant waters can be submitted to transactions done according to civil law (Water Law, 2001).

The ownership rights to flowing lakes, hereinafter referred to as publicly owned lakes, can be held by several institutions: the President of the National Water Management Board (Polish abbreviation: KZGW), where it is a task in the domain of government administration performed by the local government of a voivodship, and directors of national parks, as an organ of government administration performing the voivod's task on their own behalf. The legal regulations also allow for delegating the exercise of ownership rights to publicly owned water bodies situated within the limits of a forest division to

the chief forester of that forest division, by way of agreement and pursuant to the forester's motion (table 1).

**Table 1.** Ownership rights to public lakes

| Institution   | Type of waters covered by the rights  | Example  |
|---|---|--|
| President of the National Water Management Authority; Directors of Regional Water Management Boards (non-unified government administration) | Waters essential for water resources and flood control, in particular groundwaters and inland surface waters, including: <ul style="list-style-type: none"> <li>- natural watercourses, from springs to estuaries, with an average multi-annual water flow of no less than 2.0 m<sup>3</sup> s at the estuary's cross-section</li> <li>- lakes and water reservoirs intersected by watercourses defined above,</li> <li>- in border regions,</li> <li>- inland water routes.</li> </ul> | the Pisa River with the lakes: Niegocin, Boczne, Jagodne, Szymoneckie, Szymon, Tałowisko, Ryńskie, Tały, Mikołajskie, Śniardwy, Seksty and Roś (an inland water route) <sup>a)</sup> |
| Marshall of the Voivodship; Board of Land Amelioration and Water Facilities in each voivodship (local voivodship government)                | Water essential for the regulation of water relations for use in agriculture, serving to improve soil productivity and facilitate soil cultivation.   | Łańskie Lake (area 1042.3 ha, in the voivodship warmińsko-mazurskie) <sup>b)</sup>   |
| Director of a national park (government administration, the voivod's tasks performed on one's own behalf)                                   | Waters situated within the park's limits, excluding waters in border regions and comprised in inland water routes, which are classified higher than class I.  | Wigry Lake (area 2118.3 ha, Wigierski National Park) <sup>c)</sup>   |
| District Forester (a state-owned business and organizational entity)  | Waters essential for shaping water resources and water essential for regulation of water for use by agriculture within the forest district's limits.  | no data  |

<sup>a)</sup> according to attachment I to the regulation of the Council of Ministers (2002)

<sup>b)</sup> according to attachment III to the aforementioned regulation of the Council of Ministers (2002)

<sup>c)</sup> based on the regulation of the Council of Ministers (1977)

The Chairman of the KZGW has ownership rights to lakes: intersected by flowing watercourses in which the average multi-annual water flow is no less than 2.0 m<sup>3</sup>/s measured at the estuary's cross-section, constituting border waters, or crossed by inland water routes. In practice, these tasks are performed by the Director of the Regional Water Management Board (the Polish acronym: RZGW) in a given voivodship.

The marshall of a voivodship exercises ownership rights primarily with respect to waters that play a substantial role in regulating the budget of waters serving agriculture, i.e. used to improve the productive capacity of soils and to facilitate soil cultivation. In practice, on behalf of the marshall, these tasks are carried out by the Board of Land Amelioration and Water Facilities in a given voivodship. An inventory of public lakes the ownership to

which are exercised by the director of the regional water management board and the marshall of the voivodship is presented in the regulation of the Council of Ministers (2002).

The director of a national park performs ownership rights with respect to lakes located within a given national park. Excluding waters which are classified in a class higher than class I, compliant with the act on inland navigation (2000).

## Administration of publicly owned lakes

The central government administration organ responsible for governance of waters in Poland is the President of the National Water Management Authority (KZGW), whose tasks include supervision and monitoring of the activities pursued by directors of regional boards of water management (RZGW), and this involves the approval of planned activities and reports of their performance. The RZGW Director is an organ of government administration not responding to the voivode (non-unified administration organ), competent in matters of water management in a given water region. Its tasks include defining the conditions underlying the use of waters, keeping a water cadaster, planning the activities connected with the restoration of degraded water ecosystems and auditing.

The state system of the governance of water resources barely takes into consideration the specific character of lakes. Furthermore, the administration of publicly owned lakes, despite the engagement of numerous institutions and the clear division of their competence areas (table 2), does not achieve the basic aims defined in the binding law (table 3).

The following should be mentioned as the most serious examples of irregularities and negligence in the administration of lakes:

- the widespread cases of barring the access to public waters and lawless use of the land owned by the State Treasury that is not covered by water but that constitutes one real estate property together with a lake,
- incomparably small, relative to the scale of confirmed irregularities, number of audits with regard to effective access to lakes and proper care of the entrusted State Treasury property,
- low effectiveness of the measures taken when the following irregularities are identified: lawless construction of building structures and lawless use of the land of the State Treasury which constitutes cadastral land parcels denoted as lakes,

- incomplete and outdated data regarding issued water legal permits in a water cadastre, lack of cohesion between cadastral data concerning lakes and data originating from the register of land parcels and buildings.

**Table 2.** Administration of publicly owned lakes

| Institution   | Type of right/scope of competence   |
|---|---|
| Director of the Regional Water Management Board   | planning the management of waters: <ul style="list-style-type: none"> <li>• the country's water and environment programme,</li> <li>• management plans in areas of river catchments,</li> <li>• conditions for using waters from particular water regions.</li> </ul>   |
| Marshall of a voivodship (a province)   | <ul style="list-style-type: none"> <li>• water legal permits (for example, for projects that will have substantial influence on the environment, introduction of substances inhibiting the growth of algae to surface waters, construction of building structures, extraction of stone, gravel, sand and other materials from surface water bodies),</li> <li>• delineation of shorelines (for border waters and inland water routes),</li> <li>• delineation of agglomerations,</li> <li>• maintaining an inventory of waters under governance and water amelioration facilities.</li> </ul> |
| Starosta (head of a district) (district local government)                                     | <ul style="list-style-type: none"> <li>• management of the land under flowing waters,</li> <li>• delineation of shorelines,</li> <li>• issuing water legal permits and receiving notifications,</li> <li>• keeping a register of water equipment,</li> <li>• maintaining a guarded harbour or marina,</li> <li>• removal of abandoned ships and other water equipment.</li> </ul>   |
| Head of a rural commune or urban municipality (local government of a commune or municipality) | <ul style="list-style-type: none"> <li>• delineation of the part of a real property that gives access to waters,</li> <li>• changes to the status of waters on the ground, approval of resolutions of disputes,</li> <li>• keeping a register and supervising bathing beaches (in collaboration with the State Sanitary Inspectorate).</li> </ul>   |

Source: based on the Water Law (2001)

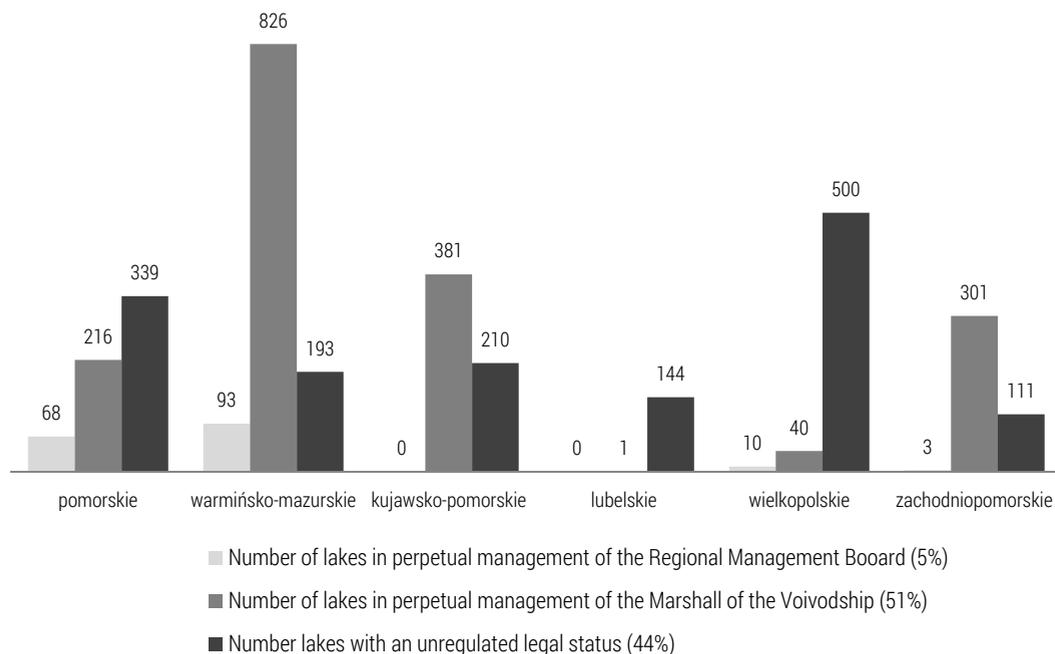
**Table 3.** Administration of lakes in light of the information provided by the Supreme Audit Office (NIK)

| Irregularities  | Institution   | Main reason  |
|---|---|--|
| Common irregularities include barring the access to public waters and lawless use of the land belonging to the State Treasury that is not covered by water but that constitutes one real property together with a lake.   | Director of the RZGW  | a need to update delineated lake shorelines, which would incur considerable costs  |
| An incomparably small, relative to the scale of confirmed irregularities, number of audits regarding the execution of the right of access to lakes and the care given to the property of the State Treasury submitted to management.  | Mashall of the Voivodship   | lack of delineated shorelines and difficulty in assessing the seriousness of the breach of law and extent of damage                            |
| The low effectiveness of measures taken when cases of lawless construction of building structures or lawless use of land which belongs to land parcels denoted as lakes are detected. Of 1,837 cases of lawless construction, 41 were legalised, 25 demolished and in 272 cases administrative proceedings were in progress. In the remaining 82% of cases none of the required administrative steps have been taken. | Director of the RZGW<br>Marshall of the Voivodship<br>State Construction Supervision Inspectorate | lack of delineated shorelines and difficulty in assessing the seriousness of the breach of law and extent of damage                            |
| Lack of inventories of lakes and water facilities built on the land owned by the State Treasury and transferred to perpetual management. An inventory drawn at the Board of Land Amelioration and Water Facilities in Szczecin revealed 1,442 illegally built water facilities.   | Director of the RZGW<br>Mashall of the Voivodship   | lack of an appraised value prohibited their inclusion in an inventory of tangible assets, absence of real estate trading governed by civil law |
| A water cadaster – data regarding issued water permits were incomplete and outdated. Over 35% water permits issued by heads of districts (starosta) covered by the audit were not included. The data in the cadaster frequently did not reflect the data concerning lakes and included in the register of lands and buildings.  | Director of the RZGW  | a large number of decisions, data collated from various systems, e.g. GIS  |

Source: based on: NIK (2011, 2015)

A possible measure illustrating the lacking interest in lakes is the fact that for 14 years since the Water Act of 2001 came into life, the authorized institutions have not confirmed the transfer of property rights to their perpetual management, hence in practice 44% of the analyzed lakes have an unregulated legal status (figure 2).

Although most of the irregularities mentioned above are formal in nature, they pose a serious threat to lakes. Cases of negligence mostly concern the shorelines of lakes and areas adjacent to lakes (tab. 3), which play a key role in the permeation of pollutants from lakes catchments to their waters.



**Figure 2.** Formal and legal forms of the management of lakes with an area of over 1 ha in the analyzed voivodships as of 31 December 2014

Source: NIK (2015).

A catchment basin is the major source of pollutants in lakes (Soszka et al., 2003). Construction of buildings and other objects, especially cases of lawless development of lake shorelines, cause damage and eliminate the natural protective barriers of lakes, such as belts of trees and shrubs growing along the shores of lakes. The lack of supervision over such matters is conducive to uncontrolled recreational use of lakes, which consequently receive wastewater and sewage from summer cottages, camping sites and alike, situated in close proximity of lakes, built without any formal development plans and most frequently lacking suitable wastewater and sewage facilities. This is accompanied by a more intensive process of damage to the shores and shoreline plants, which in turn intensifies the influx of harmful substances from the whole catchment. The widespread lawless practice of land fencing (NIK, 2015) and the lack of accessible paths along the shores of lakes are the consequences. Chaotic, over intensive and uncontrolled development along the banks of lakes contributes to their loss of landscape and other values, which are among the basic contributors to their appeal to tourists and holidaymakers (Potocka, 2015; Kulczyk et al., 2016).

## Discussion and Conclusions

Institutions lie at the core of the management of lake catchments. They perform and supervise the performance of tasks defined by legal regulations; they shape the policy and initiate new legal solutions; they can also serve as a centre for engaging other interested persons and organizations into decision-making processes. In many countries, these institutions include government organizations, for example departments of fisheries and environment protection agencies, as well as non-government organizations and community associations connected with specific economic fields, e.g. fishing, angling or tourism, etc. (ILEC, 2005).

However, the law currently binding in Poland states that decisions about the use and protection of publicly owned lakes lie exclusively in the hands of public administration offices. Most of the irregularities with respect to the administration of lakes in the country are said to arise from the lack of data on lake shorelines and their updates, which is due to the considerable cost of maintaining such databases. The fact that many publicly owned lakes have not been confirmed to be submitted to perpetual management by relevant state or government institutions has been explained by the interpretation of the Water Law provisions, according to which perpetual management applies only to grounds covered by waters while in numerous cases a land parcel comprising a lake also includes some land not covered with water (NIK, 2015). The draft of a new Water Law (2016) envisages higher inputs into water management, which should help to solve the former problem, while the latter one can be solved owing to the regulation stating ownership rights to inland flowing waters are inclusive of the real estate properties situated within the limits of a given land parcel which comprises these waters. The Water Law draft (2016) delegates the governance of inland waters solely to public administration and guarantees social consultations in cases where new programmes or plans are being prepared. Considering the scale of negligence and several thousand of lakes affected, it can be expected that the achievement of the basic administrative tasks such as putting in order the inventory of owned properties (completing and updating the register data, collecting information on the current use of lakes, and dealing with lawless building structures) – that is the tasks preceding the actual management of lakes – will take many years.

The experience gained in other countries suggests that institutions responsible for the administration of lake catchments need time before they operate effectively (ILEC, 2005). This experience also implies that the above process can be greatly accelerated by the decentralization of some of the competences by delegating them to more local level institutions, and by the

inclusion of other interested parties, including non-government organizations and community associations into the decision-making process (Davidson, Loë, 2016).

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