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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

40th meeting
Strasbourg, 30 November - 4 December 2020

Complaints on stand-by

**Presumed threat to Emerald site “Polonina
Borzhava” (UA0000263) from wind energy
development
(Ukraine)**

- REPORT BY THE COMPLAINANT -

Document prepared by

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the Ukrainian Nature Conservation Group (UNCG), Ukraine



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№ 775/2020

31/08/2020

Secretariat of the Bern Convention

Kyiv, 31 August 2020

Subject: new information on Complaint No. 2018/01: Presumed threat to Emerald site “Polonina Borzhava” (UA0000263) from wind energy development (Ukraine)

I. The case №260/771/19 in the Transcarpathian regional administrative court (that we mentioned in our previous reports) ended. The court decision cancelled the EIA conclusion statement (issued by the Department of the ecology of Transcarpathian Regional State Administration) which allowed planned activity – wind power plant within the borders of Emerald site “Polonina Borzhava”.

Tybava village council appealed this court decision and the case will continue in the Eighth Administrative Court of Appeal in Lviv.

There is also a case on cancelling license for construction in Eighth Administrative Court of Appeal in Lviv (case 260/1058/19).

II. From mass media, we know that at the highest state level there is an idea of a project to build a huge ski resort on Polonina Borzhava, regardless that this is the Emerald network site. As of today, there are no documents available to say more.

III. There is no moving forward in creating new protected areas on Polonina Borzhava.

Thanks.

Kind regards,
Oleksii Vasyliuk

- February 2020 –



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Secretariat of the Bern Convention

Subject: new information on Complaint No. 2018/01: Presumed threat to Emerald site “Polonina Borzhava” (UA0000263) from wind energy development (Ukraine)

I. The case №260/771/19 on the claim of NGO “Noosphera” to the Department of the Ecology of Transcarpathian Regional State Administration (hereafter “The Department”) in the Transcarpathian regional administrative court (mentioned in our previous report from August 2019) is still ongoing. The next trial is planned on 27 February. The purpose of this case is to cancel the EIA conclusion statement, which was issued by the Department and allows the development of the wind power plant within the Emerald site “Polonina Borzhava”.

The Ministry of Energy and Environment of Ukraine (hereafter “The Ministry”) is involved in the case as a third-party actor on the defendant's side. During the EIA the Department appealed to the Ministry with information from ecologists that transboundary EIA is needed due to mass migration of common crane (*Grus grus*), observed above Polonina Borzhava in autumn 2018. Nevertheless, the Ministry has refused starting transboundary EIA. The Ministry's involvement in the court case №260/771/19 has so far been limited by sending the only one document: a formalistic written explanation. This explanation contains neither a reference to the fact that the planned activity is located within the Emerald site “Polonina Borzhava”, nor information about the case on “Presumed threat to Emerald site “Polonina Borzhava” (UA0000263) from wind energy development” being considered by the Berne Convention bodies. The Ministry's position is that the conclusion statement is legal and should not be cancelled. The Ministry's representative was never even present at the court hearings (!)

II. Following the public hearings (that took place as a part of EIA procedure on January 30-31, 2019) and up to now, the developer (“Atlas Volovets Energy” LLC) is constantly trying to put

pressure on activists who have been active during the public hearings and are also involved in the trial described above. For example, the developer periodically sends lawyer's requests to activist employers, with the requirement to provide documents confirming the lawfulness of their presence at hearings and formal grounds for conducting a scientific expedition on Polonyna Borzhava. We consider such practices as shameful and unacceptable.

III. The developer, «Atlas Volovets Energy» LLC, having EIA conclusion statement on the project on wind power plant (WPP), mentioned in the previous item, has obtained the building permit for the construction of WPP within the Emerald site “Polonina Borzhava”. After the State Architectural and Construction Inspection of the Transcarpathian region refused to provide the building permit twice due to non-compliance, the developer appealed to central office of the Inspection in Kyiv. The central office has issued the permit contrary to the rules of the law on the division of powers of its structural subdivisions. The court case №260/1058/19 regarding the revocation of this permit was completed at first instance. The court's decision denied the claim, but the complainant NGO “Noosphera” is preparing to appeal this decision in an appellate court.

IV. At the beginning of 2019 we provided a justification for the establishment of the “Zelenytsia” local protected area (1028,5 ha) within the Mizhgyrya district on Polonina Borzhava. We received negative responses from the land steward – General Directorate of the State Land Cadaster of the Transcarpathian region – twice. We have complained to the Ministry of Energy and Environment of Ukraine about this situation in order to assist in the establishment of this protected area.

V. The public interest to the situation around Polonina Borzhava is not diminished as this area is an extremely popular tourist and recreational site. To draw more attention to the problem, the Scout organization of Ukraine has brought The Peace Light of Bethlehem to one of the highest mountain tops of Borzhava range.



Kind regards,
Oleksii Vasyliuk, UNGC.

A handwritten signature in blue ink, appearing to be "Oleksii Vasyliuk".