

Cedar River bridge lawsuit proceeds before Warren County Supreme Court

By Gwendolyn Craig, Post Star

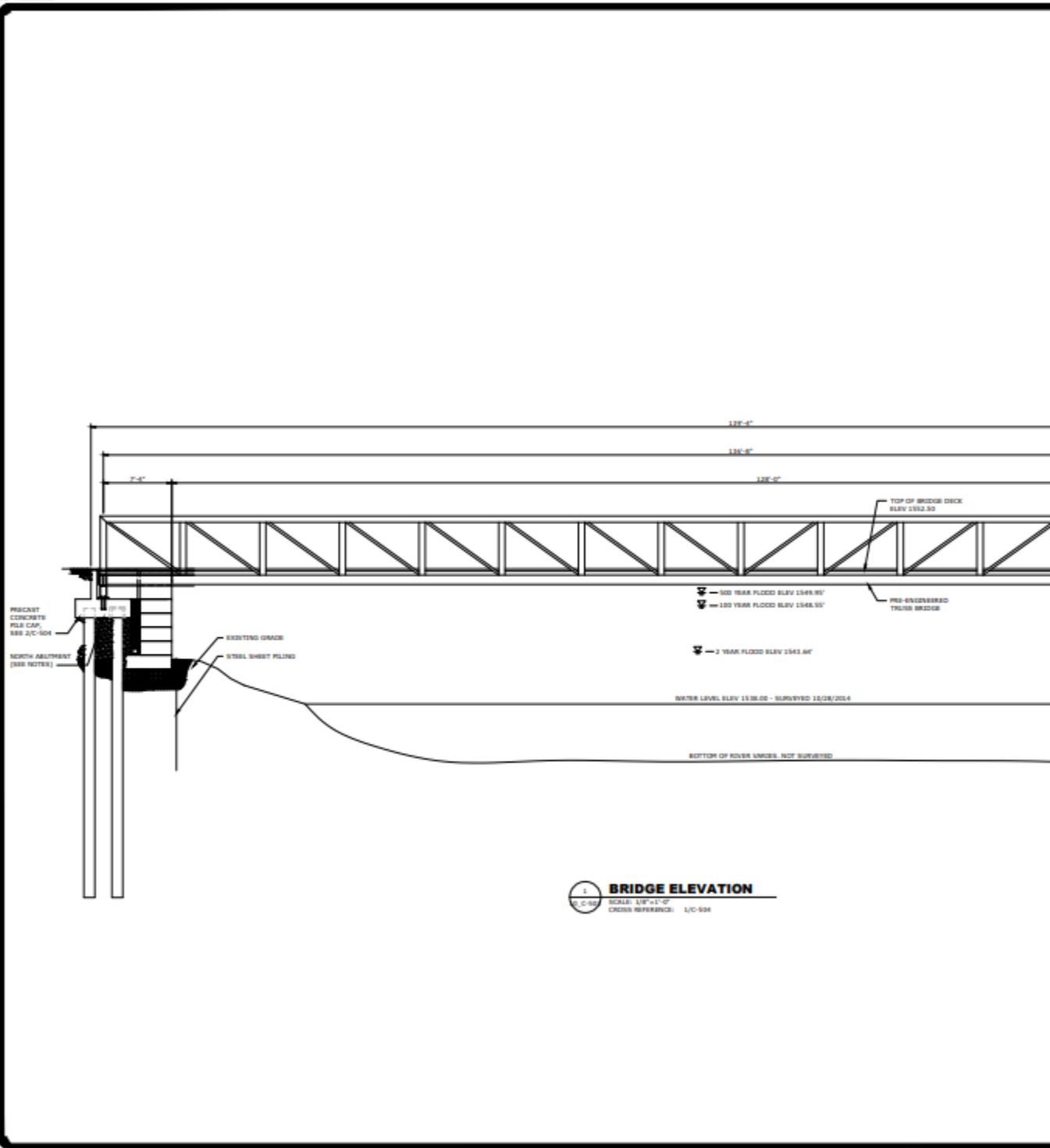
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The Cedar River is seen. The state Department of Environmental Conservation is looking to build a snowmobile bridge over the river.

Courtesy of DEC



Seen here is part of the engineering designs by C.T. Male Associates for the state Department of Environmental Conservation on a proposed bridge over the Cedar River in Minerva.

QUEENSBURY — A Supreme Court judge heard opening arguments Wednesday for a lawsuit against the state regarding a proposed snowmobile bridge over the Cedar River in the Essex Chain Lakes.

It is considered a “first impression” case, meaning the legal issue is new for the court.

Judge Robert Muller reserved making a decision, but said he expects to make one in the coming days. Meanwhile, the state has already solicited bids for the bridge and hopes to begin construction later this year.

The case was brought by two environmental groups, Protect the Adirondacks and Adirondack Wild: Friends of the Forest Preserve. The two sued the state at the beginning of this year, fighting against a bridge that would connect an existing trail network between Indian Lake and Minerva.

According to DEC permit documents, the bridge would be about 139 feet long, 12 feet wide and made of steel. It would be built in the town of Minerva.

The environmental groups argue the Cedar River is considered “scenic” under the state’s Wild, Scenic and Recreational Rivers System Act, and thus is protected from such a project.

Opening arguments were made by lawyer Chris Amato, representing the environmental groups, and Susan Taylor and Nick Buttino, both assistant attorneys general for the state, representing the Department of Environmental Conservation. Amato is a former DEC commissioner for natural resources.

The hearing was prefaced by Muller's disclosure that he knew the area well and had once been a member of the Gooley Club, a hunting and fishing camp in Newcomb.

He left his membership 15 years ago, Muller said. He did not feel he needed to recuse himself from the case, but offered to discuss it with both parties. Following an approximately 30-minute private conference with the lawyers, both parties said they had no issue with Muller's connection to the land.

Amato began with his opening arguments.

The Rivers Act, short for the Wild, Scenic and Recreational Rivers System Act, was created by the state Legislature to protect "the unique ecological, scenic and recreational use" and to "identify in the act the limited type of land use and development that are compatible in or allowable in a designated river area," Amato said.

DEC's regulations include what uses are allowed, and trails and bridges for motorized recreational uses are not included, Amato said. He added that the regulations state "any use or structure that is not listed ... is presumed to be incompatible with the purposes and policies of the Rivers Act."

"What this case does is it puts squarely before the court that whether the protections afforded under the Rivers Act are going to be working as intended by the Legislature, or whether DEC can, with its administrative magic wand, make them disappear," Amato said.

Buttino countered that DEC went through the proper procedures to issue a permit for building the bridge and said nothing in the Rivers Act "prohibits the use of motor vehicles in a scenic river area."

“The regulations are silent as to whether motor vehicles are allowed,” Buttino said. “If DEC had wanted to ban it outright, they would have done so. Instead, DEC listed what uses are commonly permitted, and then listed other uses presumed incompatible, but that does not mean an outright ban.”

The bridge, Buttino argued, could actually lessen environmental impacts by keeping people from going into the river to cross. It also provides more access to a trail system that would allow hiking, biking, cross country skiing, horse back riding and snowmobiling.

Buttino also asked Muller to strike new affidavits the environmental groups provided to the court. One document included testimony from Richard Smardon, a SUNY College of Environmental Science and Forestry professor, about the visual impact the bridge could have on the area.

Smardon does not speak favorably of the bridge in the affidavit, saying “the large size of the bridge, the non-natural construction materials to be used, and its location in a remote and naturally scenic stretch of the Cedar River which is currently free of manmade structures are, in my opinion, inconsistent with and will significantly impair the scenic and aesthetic attributes of the Cedar River.”

Buttino said the affidavit was not before the DEC when it was making a decision on a permit for the bridge. He described it as a “critique after the fact.”

Buttino also pointed out the environmental groups had sued the state regarding the entire Essex Chain Lakes Management Complex Plan and lost in Albany County Supreme Court.

Muller also asked both parties about another court case being heard in the New York Court of Appeals for a proposed snowmobile trail within a wild river area of the Hudson River, in the same Essex Chain Lakes area. Amato said it was a separate matter.

Both parties, however, said the outcome of that decision could impact Muller's decision, but they both did not want Muller to delay a decision because the DEC has already gone out to bid for the snowmobile bridge.

Buttino said he believed DEC's plans were to issue a bid at the end of May or in early June. If the environmental groups seek an injunction, Buttino said, it could cost the DEC hundreds of thousands of dollars and "set back a building season, which would limit public access."

Muller did not agree with Buttino's request to strike the affidavits from the record.

"The issues here are important and certainly complex, and again, a lot of this is first impression," Muller said. "I'd like to have a copy of everything in front of me to consider and make sure everybody is heard."

The judge added that he would be reserving his decision to analyze documents and consider the oral arguments, which he called "spirited and useful."

Following the proceeding, Muller said he expected to have a decision soon.