

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA**

UNITED STATES OF AMERICA )  
and the STATE OF INDIANA, )  
) )  
Plaintiffs, )  
) )  
CITY OF CHICAGO and the )  
SURFRIDER FOUNDATION, )  
) )  
Intervenor-Plaintiffs, )  
) )  
v. )  
) )  
UNITED STATES STEEL )  
CORPORATION, )  
) )  
Defendant. )  
) )  
\_\_\_\_\_ )

Case No. 2:18-cv-00127

MOTION OF NATIONAL PARKS  
CONSERVATION ASSOCIATION FOR  
LEAVE TO FILE *AMICUS CURIAE*  
BRIEF IN OPPOSITION TO ENTRY OF  
REVISED CONSENT DECREE

**MOTION**

The National Parks Conservation Association (“NPCA”) respectfully moves for leave to file a brief as *amicus curiae* in opposition to entry of the revised Consent Decree. The proposed Consent Decree relates to United States Steel Corporation’s (“U.S. Steel”) violations of the Clean Water Act and other federal and state laws at its Portage, Indiana facility. U.S. Steel’s facility is directly adjacent to Indiana’s first national park, Indiana Dunes National Park (“Indiana Dunes” or “Park”). In its proposed *amicus curiae* brief attached hereto, NPCA highlights the significant impacts that U.S. Steel’s violations have had and likely will continue to have on the Park and its millions of visitors, and how the proposed Consent Decree does not adequately provide protections for or remedy past impacts to the Park.

NPCA conferred via email with all parties on the instant motion. Defendant U.S. Steel and Intervenor-Plaintiffs, City of Chicago (“Chicago”) and Surfrider Foundation (“Surfrider”),

do not oppose NPCA's motion. Counsel for Plaintiff United States advised that the United States and the State of Indiana intend to oppose NPCA's motion.

NPCA is a non-profit organization founded 100 years ago to protect and enhance America's National Parks for present and future generations. As its name announces, NPCA is the only national non-profit organization dedicated solely to advocating for this country's treasured national parks. With headquarters in Washington, D.C. and 27 regional and field offices across the country, NPCA represents more than 1.4 million members and supporters who care deeply about America's shared natural and cultural heritage preserved by the National Park System. For many, NPCA serves as the voice of the National Parks. It educates the public on the rich history, culture, and nature protected within the Parks. NPCA also advocates for protection of these cherished places at a grass roots level, in the courtroom, and on Capitol Hill.

Indiana Dunes is among the National Parks for which NPCA has advocated for enhancement and protection.<sup>1</sup> Since the 2007 launch of its Midwest Regional office based in Chicago, NPCA has led critical work to protect the Park's wetlands, namesake dunes and Lake Michigan shoreline. For the last 10 years NPCA's advocacy has attracted millions of federal dollars to Indiana Dunes and its landscape to restore wetlands and clean up toxic areas in park waterways. NPCA's members and supporters have spent many years enjoying and exploring Indiana Dunes and are concerned that if the Consent Decree is entered as proposed, the Park they have long cherished and worked to preserve will not adequately be protected from future pollution. The importance of NPCA's work intensified earlier this year when the designation of the park unit changed from a National Lakeshore to a National Park, which resulted in a

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<sup>1</sup> Indiana Dunes has been a National Lakeshore since 1966 and has been operated as a unit of the National Park System by the National Park Service since that time. *See* <https://www.nps.gov/indu/learn/historyculture/index.htm> (last visited Dec. 18, 2019).

significant increase in visitation.<sup>2</sup> NPCA expects the increased visitation to continue due to the Park's higher profile making it critical to avoid future beach closures due to industrial pollution events, to have effective notification procedures for park-goers if such events do occur, and to ensure taxpayers do not foot the bill for natural resource damage assessments and remediation.

This Court has broad discretion to permit leave to file an *amicus curiae* brief. *See National Organization for Women, Inc. v. Scheidler*, 223 F.3d 615, 616 (7th Cir. 2000) (“Whether to permit a nonparty to submit a brief, as *amicus curiae*, is . . . a matter of judicial grace.”). Participation as *amicus curiae* is appropriate where the Court determines the nonparty is not adequately represented or provides a unique perspective that can assist the court. *Id.* at 617; *see also Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (“An *amicus* brief should normally be allowed when . . . the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.”).

When one of America's national parks is implicated in the settlement of a case involving environmental violations, “there is an overriding interest in preserving the [park] for generations to come.” *United States v. City of Akron*, No. 5:09CV272, 2013 WL 999909, \*8 (N.D. Ohio, March 13, 2013). This “overriding interest” is NPCA's mission, and NPCA is uniquely qualified and situated to advocate for that important public interest. Moreover, “[t]he purpose in creating [a park] parallels the purpose of the Clean Water Act—both were designed to preserve natural resources,” accordingly the public interest in cases involving national parks is extremely high. *United States v. City of Akron*, 794 F. Supp.2d 782, 792 (N.D. Ohio 2011). In the *City of Akron*

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<sup>2</sup> *See* <https://www.wbaa.org/post/visitor-numbers-are-indiana-dunes-became-national-park#stream/0> (last visited Dec. 18, 2019) (National Public Radio story noting dramatic increases in visitation following Indiana Dunes resignation as a National Park, but also noting tourists cancelling hotel reservations following industrial spills in August 2019).

case, Judge Adams was primarily concerned with ongoing and potential impacts to the Cuyahoga Valley National Park, and found “the interest in protecting this sensitive area substantially overwhelms any alleged delay or expense related to appointment of an expert [to evaluate the proposed consent decree].” *Id.* at \*8.

Like Cuyahoga Valley National Park, Indiana Dunes National Park is one of only a handful of national parks in the Midwest and is subject to unique pressures due to its proximity to industry and population centers.<sup>3</sup> NPCA’s 100-year history of preserving and enhancing national parks gives it a unique perspective to present to the Court regarding the proposed Consent Decree’s impacts on Indiana Dunes National Park. The “overriding interest” in preserving the Park, and NPCA’s unique ability to represent that interest in this case “substantially overwhelms” any perceived prejudice or delay caused by granting NPCA amicus status. Many courts have recognized NPCA’s unique perspective when it comes to issues involving national parks, and NPCA is routinely granted leave to participate as amicus in all stages of federal litigation. *See, e.g., Alaska v. United States*, 545 U.S. 75, 103, (2005) (noting arguments advanced by NPCA as *amicus curiae*).

As the attached *amicus* brief shows, NPCA is not simply re-raising all of the issues or repeating the arguments it made in its comments on the initial proposed Consent Decree.<sup>4</sup> Rather, NPCA focuses primarily on direct impacts to Indiana Dunes National Park. NPCA is singularly situated to present this unique perspective, which the Intervenor-Plaintiffs cannot

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<sup>3</sup> In discussing the sensitive nature of the Cuyahoga Valley National Park, the *City of Akron* court noted the creation of a new towpath trail in 1993 that doubled park visitation the next year, and the overall number of visitors to the park. *See City of Akron*, 2013 WL 999909 at \*2. The court found the impacts on the national park “obligated [it] to closely scrutinize the EPA’s adherence to its own Guidance.” *Id.*

<sup>4</sup> While not repeating the arguments and facts raised in NPCA’s comments, NPCA urges the Court to review those comments, most of which were not addressed by the revised Consent Decree. *See* Sample of Public Comments, ECF No. 47-5, Att. E, at PDF pages 39–88, 247–259.

provide. Neither the City of Chicago nor Surfrider is solely focused on the Park, or has the perspective of NPCA's 100 years of advocacy for America's national parks. Further, although the National Park Service ("NPS") is involved in the present suit, it does not always represent NPCA's and its members' concerns. As explained more fully in the attached *amicus curiae* brief, NPCA has several concerns with the Consent Decree as proposed and supported by NPS and other federal agencies. Unlike the NPS here, NPCA, as an independent and non-partisan non-profit organization, is not constrained by governmental obligations or the competing interests of other federal agencies. Accordingly, no other party to this litigation adequately represents NPCA's interests or provides NPCA's unique perspective.

NPCA respectfully requests that the Court grant NPCA's motion to participate in this matter as *amicus curiae* and allow NPCA to file the attached *amicus curiae* brief.

**NPCA's Corporate Disclosure Statement**

Pursuant to Federal Rule of Civil Procedure 7.1, the undersigned, counsel of record for National Parks Conservation Association, certifies that National Parks Conservation Association, as of this date, is a nongovernmental corporate party and does not have a parent corporation and that no publicly held corporation holds 10% or more of its stock.

Respectfully submitted this 26th day of December, 2019.

*s/ Kevin Cassidy*  
Kevin Cassidy, *pro hac vice*  
Earthrise Law Center  
P.O. Box 445  
Norwell, MA 02061  
Telephone: (781) 659- 1696  
Email: cassidy@lclark.edu