

**AFGE Local 704 * Alaska Wilderness League
African American Ministers in Action * Alliance for Justice * Azul
California National Organization for Women * Clean Water Action
Earthjustice * Environmental Defense Fund * Friends of the Earth U.S.
Lawyers for Good Government * League of Conservation Voters
Matthew Shepard Foundation * MIT Alumni for Climate Action * NAACP
NRDC * Oceana * People For the American Way**

April 12, 2021

The Honorable Dick Durbin,
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Chuck Grassley,
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

**RE: Letter of Support for Todd S. Kim, nominee for Assistant Attorney General,
Environment and Natural Resources Division, U.S. Department of Justice**

Dear Chairman Durbin and Ranking Member Grassley,

The eighteen undersigned groups strongly support President Biden's nomination of Todd S. Kim to become the Assistant Attorney General (AAG) of the Environment and Natural Resources Division (ENRD) at the U.S. Department of Justice. We ask you to waste no time confirming Mr. Kim to this important role. Mr. Kim has a sterling record of achievement in public service, a deep knowledge of federal environmental law and the Division itself, and a strong reputation as a manager who inspires trust as a decisionmaker who considers all sides of an issue.

ENRD has three important responsibilities in any administration. First, it is responsible for enforcing our nation's environmental laws on behalf of the federal government and the American people. In that context, the AAG supervises decisions by the Division's lawyers regarding what cases to pursue and defend, and what relief and penalties to seek. Second, ENRD represents government agencies against actions brought by individuals, communities, regulated entities, and public interest groups like ours. In that context, the AAG supervises decisions about what arguments the government will raise in its defense. And third, ENRD coordinates and advises the government on rulemakings and legislation that affect the environment, climate change, and our rights to clean air, safe water, and the equal protection of our laws.

Because of these responsibilities, it is important for any administration to choose an excellent AAG for ENRD. But that choice is even more important now. ENRD's prior leader, Jeffrey Bossert Clark, injected a political agenda into the Division's legal work to a degree never before seen. Under Mr. Clark's direction, the number of enforcement actions against polluters plummeted, civil penalties fell to historic lows, and staff positions remained vacant. Worse still, he instructed staff to adopt extreme and politically-driven legal

positions aimed at undercutting the government's own regulatory authority. This eroded staff morale and hobbled the Division's effectiveness in court.

ENRD's new AAG will need the legal acumen and experience to evenhandedly assess the prior administration's litigation positions and administrative actions for compliance with America's laws. He will also need the institutional judgment to determine whether and how the Division must modify its approach to ongoing matters so as to carry out its own responsibility to honor those laws. And, finally, the new AAG must have the leadership and executive skills necessary to help the Division recover its morale and rededicate itself to the mission of fighting for communities suffering from the impacts of pollution, climate change, and mismanagement of natural resources—particularly the communities of color that shoulder a disproportionate burden of environmental harm in this country.

We are confident that Todd Kim has all these skills and more. Mr. Kim is, first and foremost, an uncommonly talented lawyer who is deeply respected in environmental circles. Over the course of his career, Mr. Kim has handled many challenging matters that have involved complex environmental issues such as the federal government's liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (e.g., *U.S. v. Shell Oil Co.*, 294 F.3d 1045 (9th Cir. 2002)) and the authority of the President to create the Grand Staircase-Escalante National Monument (*Utah Ass'n of Counties v. Bush*, 455 F.3d 1094 (10th Cir. 2006)). He has been the attorney of record in hundreds of lawsuits and has argued more than 50 appeals in courts across the country, including the U.S. Supreme Court.

Mr. Kim is also a dedicated public servant who has a deep knowledge of ENRD itself. Mr. Kim spent eight years as a career attorney in ENRD's appellate section during the Clinton and Bush administrations. During that time, he received the Department of Justice's Outstanding Performance Award three times, as well as the Environmental Protection Agency's highest honor, its Gold Medal for Exceptional Service. After leaving the Division, Mr. Kim served as the first Solicitor General of the District of Columbia, where, over the course of a decade, he gained valuable experience in managing staff, overseeing a budget, and leading a department. Throughout these periods, Mr. Kim developed a reputation for excellence, humility, and integrity—qualities that will serve him well as AAG and help him gain the respect and trust of ENRD's career staff and attorneys.

Mr. Kim also has another quality that we believe is important. He is open-minded and genuinely interested in hearing from multiple perspectives. This is particularly important to us because we fully expect to disagree with many of the things that the Biden administration does over the next four years. When difficult questions of law arise, we are confident that Mr. Kim and his staff will listen to our views—just as he will listen to the views of industry litigants, state governments, and other interested parties. We don't expect that he will always see things our way, but we do know that no matter what decision he makes, all parties will respect his fairness, integrity, and commitment to justice.

ENRD will play a critical role in the Biden administration's efforts to protect the environment, combat climate change, safeguard vulnerable communities, and defend our nation's laws. It should be led by someone who believes in science, who understands the role that government must play in regulating industry, and who recognizes the need to confront the linkages between environmental harms and racial inequity.

We believe Todd Kim is such a person, and we hope his nomination gets swift and unanimous confirmation.

Sincerely,

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