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So is this tribe shopping or what?

Father of a Nation

As head of the U.S. Bureau of Indian Affairs, Kevin Gover single-handedly gave the Koi Nation land rights. Now, he's stepped through the revolving door to hawk the tribe's plans for a Bay Area casino.

BY RON RUSSELL 3-1-05
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On Dec. 29, 2000 -- his last day as director of the U.S. Bureau of Indian Affairs -- Kevin Gover signed paperwork legitimizing a band of 53 people, most of them children, as the sovereign Koi Nation. He took the action even though members of his own staff warned him in a memo, made available to SF Weekly, that the designation was unwarranted and that he might be violating federal law in granting the Koi tribal status.

Now, owing to a quirk of federal gaming law, this landless band of Pomo Indians stands ready to reap untold riches. The tribe does not need the consent of California's governor to open a Las Vegas-style slot palace near Oakland International Airport. Once the federal government declares a 35-acre parking lot where the casino would be built as its "reservation," the Koi Nation will be a casino developer's dream come true.



The proposed casino site is near the center of this photo.

Florida real estate mogul Alan Ginsburg is that lucky developer.

Ginsburg, who is also backing the landless Scott's Valley Band of Pomo in its attempt to build a Vegas-style casino up the road in Richmond, has spared no expense in assembling an array of lawyers, ethnographers, public relations consultants, and lobbyists to help the Koi attain their multimillion-dollar casino. Chief among those on the Ginsburg team pitching for the tribe is -- you guessed it -- Kevin Gover.

Although BIA officials have often passed through the revolving door to work for Indian interests, Gover's financial connection to the tribe whose federal recognition he engineered has raised eyebrows among even some of Indian Country's more jaded critics. "You build a trough and then you go feed in it. What else can you say about that?" says Tom Grey, executive director of the National Coalition Against Legalized Gambling. "In my mind, he went out [of office] like a thief in the night."

As the oldest of three children born to a white mother and a Pawnee father in Oklahoma, Gover,

now 50, arrived at BIA with both an impressive personal story and no shortage of critics.

The son of civil rights workers, he had caught the eye of an aristocratic VISTA volunteer who arranged for him to go away to a New England prep school on scholarship at age 15. He went on to obtain an undergraduate degree at Princeton and to attend law school at the University of New Mexico. After working at a prestigious Washington, D.C., law firm, he returned to Albuquerque and opened his own practice, which grew to become one of the nation's largest Indian law firms.

When President Bill Clinton nominated him to head BIA in 1996, it was Gover's second time around. He had been offered the job in 1992 and had turned it down. (A recovering alcoholic, Gover has said that he hadn't quit drinking at the time.) After he accepted the post in 1996, anti-gaming forces raised a ruckus, accusing him of being a mouthpiece for casino gambling. It hadn't helped that he had rather infamously gone to a White House coffee a few months before his appointment and forked over \$50,000 to the Democratic National Committee on behalf of a New Mexico casino operated by one of his tribal clients.

By virtue of his being a former BIA director, Gover, who now teaches Indian law at Arizona State University, is a marquee name among Indian gaming consultants. Records show that within a year of leaving the bureau, he went to work for casino deal-maker Gary Fears, a controversial figure who has been involved with the Seminole in Florida and at least two California tribes, the Timbisha Shoshone and the Guidiville Band of Pomo. (The latter tribe, which is now partnered with Harrah's, the Nevada gaming giant, and another developer, wants to open an East Bay casino at Richmond's Point Molate, just four miles from the San Pablo card club the Lytton Band of Pomo seeks to convert into a Las Vegas-style gambling mecca.)

Gover has also provided services to the Scott's Valley Band of Pomo, the other tribe Ginsburg is sponsoring in the Bay Area, which wants to plop a casino into unincorporated North Richmond.

In an interview with the *Weekly* in October, Gover downplayed his connection with the Koi Nation, aka Lower Lake Rancheria, while avoiding discussing the details of his decision to award recognition to the tribe. "I had virtually nothing to do with [Ginsburg's] relationship with Lower Lake," Gover said. "I had, I believe, one meeting with Lower Lake." (He did not return calls seeking comment for this article.) Yet, when the tribe appeared before a special session of the Oakland City Council in January in an effort to win a resolution favorable to the casino, Gover was clearly the headliner. "We've developed quite a fantastic team," Tribal Chair Daniel Beltran told the elected officials before introducing the ex-BIA director as "a leading expert in Indian law and regulatory issues."

With only Mayor Jerry Brown and one of Oakland's eight council members on record as favoring the casino, Gover's pitch didn't appear to be well-received. He may not have helped his cause by taking a jab at casino opponents, suggesting that "to the extent that the issue has been prejudged, that probably diminishes [their] credibility" with the federal Department of the Interior, which will have the final say in the matter. The remark triggered a somewhat tense exchange between Councilwoman Jean Quan, who opposes the casino, and Gover about his role with the tribe.

Quan: "You are the former director of the Bureau of Indian Affairs?"

Gover: "I am."

Quan: "And were you not the person who made this tribe eligible for land rights?"

Gover: "I am the person that restored the Koi Nation to its rightful federal recognition, yes."

Quan: "Are you now an employee of either the Koi Nation or its investors?"

Gover: "I am a consultant to its investors, yes."

Quan: "You're asking us to have faith in the credibility of the process, but clearly as an insider it seems that you have a disproportional impact on it. So you have to understand that we're somewhat skeptical."

Although the tribe would prefer to have Oakland's cooperation, in the end, the city will have little, if any, say about the casino. That's because of the Koi's special status as a so-called "restored" tribe, whose *rancheria*, or small reservation, was disbanded during the Eisenhower administration as part of a policy of assimilation. While federal law generally prevents tribes from setting up casinos on land they didn't already own in 1988 (the year the Indian Gaming Regulatory Act was enacted), restored tribes, such as those of the Pomo, which had no land when the law was passed, are exempt. (Unlike many other *rancheria* tribes, however, as a technical matter Lower Lake/ Koi Nation was never officially terminated by the federal government, even though it had ceased to be included on the government's list of federally recognized tribes after its land was sold; thus, Gover's action to *reaffirm* recognition.)

Indeed, should the Koi Nation persuade the U.S. Department of the Interior to let it acquire land near Oakland's airport as a "reservation," under the law the tribe would not need the consent of California's governor to open a casino. All of which makes what Gover did for the Koi enormously valuable. "It's almost like a free ticket," says Tom Gede, who teaches Indian law at the University of the Pacific's McGeorge School of Law in Sacramento. "It may have been unseemly, and it may be incongruous, but once they got federal recognition, there's not much anyone can do about it."

The circumstances leading to Gover's reaffirming the Koi Nation as a federally recognized tribe remain shrouded in secrecy. A letter from Gover congratulating the tribe for attaining its new status alludes to a meeting that members of his staff conducted with the tribe in October 1999. But BIA officials have failed to provide documents related to that meeting (or any other communication Gover may have had with the tribe before recognition was granted), despite the *Weekly's* requesting the records for more than three months.

No one disputes that the tribe owes its sovereignty to the singular -- and highly unusual -- administrative act executed by the former BIA director on his last day in office. That's when Gover announced his decision to reaffirm the tribe in a four-paragraph letter to its chairman, Daniel Beltran. The letter offered no legal rationale. It proclaimed that "henceforth" the tribe would be included on the list of Indian entities recognized by and eligible to receive the services of the Bureau of Indian Affairs. In making the decision, Gover wrote that he had been "advised" by two of his subordinates, the bureau's Pacific regional director and the superintendent of the Central California office, both in Sacramento.

Dale Risling, the former superintendent who is now a deputy regional director of the Pacific regional office, says that Gover initiated the review of the Koi's status. He says he does not recall the details of his own involvement. "That's been a few years ago, and I would have to go back and look at files that aren't readily available," he says. Ron Jaeger, who was Pacific regional director at the time and has since left the agency, did not respond to interview requests for this article.

What the letter didn't mention was that Gover's own staff of experts within the bureau's Branch of Acknowledgment and Research (now known as the Office of Federal Acknowledgment) was unalterably opposed to bestowing federal recognition on the Koi Nation.

Having heard rumors that Gover was about to recognize the Koi and two tiny Alaskan Indian groups, Lee Fleming, the head of the bureau's acknowledgment office, fired off a memo imploring

his outgoing boss to hold off -- just two days before the Gover edict. The memo, a copy of which was obtained by the *Weekly*, laid out the case for why the Koi Nation did not qualify for reaffirmation. Among other things, it cited problems with the list of tribal members that the group had submitted.

BIA staffers had become suspicious after the tribe, apparently aiming to clean up the list, reduced its enrollment by half in the year leading up to Gover's action. Fleming, a widely respected expert in Indian genealogy, concluded that the tribe had failed to adequately establish hereditary links to the handful of Native Americans purported to have been members of Lower Lake Rancheria before the *rancheria* was disbanded a half-century ago.

Fleming wrote that his office and the Office of Tribal Services were concerned that the reaffirmation was about to occur "without a thorough factual and legal review." Questioning Gover's legal authority to take action on his own, Fleming complained that there had been no chance for third parties to comment on the matter, which he opined was likely a violation of federal law. The memo concluded that to proceed with reaffirming the Koi and other tribes would damage the bureau's "credibility as an unbiased agency tasked with acknowledging tribes."

Recalling several "uncomfortable" verbal exchanges with his former boss during Gover's last two days on the job, Fleming says, "His response was that he had the authority to do it, and he was going to do it."

Even now, little is known about the "sovereign nation" whose leaders want to build a casino that, they say, will provide 2,200 jobs and pump more than a billion dollars into the Bay Area economy. And that's precisely the way the tribe appears to prefer it.

The Koi, whose "office" is a mail drop at a UPS Store near Oakland's Lake Merritt, receive no money from the Bureau of Indian Affairs. The tribe's finances are almost totally dependent on Ginsburg, the band's publicity-averse investor. His claim to fame before getting involved with several Indian tribes trying to enter the casino market was as one of the nation's largest developers of low-income housing. The man with whom Ginsburg ostensibly is doing business in Oakland, Daniel Beltran, is a former pickup-and-delivery courier. Beltran's brother, Dino, the tribal treasurer, used to manage a restaurant. For the past year they've been employed by East Bay Gaming, an entity Ginsburg set up to promote the casino.

Making the rounds with the Beltran brothers before civic and business groups and as they meet with elected officials is Ginsburg operative Rodney G. (Rod) Wilson, a Los Angeles-area public relations consultant. Wilson's business Web site lists him as the president and CEO of Pacific Research & Strategies, a Long Beach consulting business in which he is a partner with a professor of government at Claremont McKenna College, although the state Department of Corporations shows the firm as suspended.

Holding the title of "community relations director" for the Koi Nation, Wilson functions as the tribe's handler. He escorts the Beltrons to public events; presides over a multimedia presentation about the casino before community groups; oversees press releases and op-ed pieces distributed under Daniel Beltran's name ("Casino's Ills Overstated, Benefits Ignored"); and steps in to rescue the tribal chair and his brother from sometimes hostile questions.

He's part of a team assigned to the Koi that, besides Gover, includes Harlan Goodson, a lawyer with the influential national firm of Holland & Knight and the former head of the California Division of Gambling Control; James McClurken, a University of Michigan ethnologist; Edward Castillo, a Native American studies professor at Sonoma State University; and a phalanx of local lobbyists and

other operatives. Among them is Kathy Neal, the well-connected ex-wife of former Oakland Mayor Elihu Harris and a former Oakland Port commissioner.

Wilson carefully guards the tribe's exposure to the press. Last October, after Daniel Beltran agreed to a rare interview with the *Weekly*, Wilson showed up with the tribal leader and his brother at the restaurant where the interview was to take place and scuttled it. While Daniel and Dino Beltran sat impassively, Wilson inquired about why the newspaper wanted to write about the tribe. He then said he would "think about" the request, "and I'll get back to you." He never did. The Beltrons, Wilson, and the third member of the tribal council, Carole Tapia, all failed to respond to numerous phone calls seeking comment for this article.

Wilson also serves as chief explicator of the glitzy seven-story hotel, resort, and spa -- to be called Crystal Bay Resort -- whose 2,000 slot machines would be complemented by a 1,000-seat concert hall and up to five restaurants. It would be built on the marshy shores of San Leandro Bay, next to Martin Luther King Regional Shoreline, long a protected area for waterfowl. "For those who don't like to gamble, they can go and have a nice meal, go to the spa and get a nice massage, or just stay in the four-star hotel," he told a mostly hostile crowd of Alameda and San Leandro residents at a recent community meeting. "We believe we're creating a destination resort."

Anyone expecting to learn about the tribe creating that resort had to be disappointed.

"Can somebody from the Koi Nation explain how a person is qualified to be a member of the Koi tribe?" asked one man, during a question-and-answer session in which several people tried unsuccessfully to get the Beltrons to talk about the tribe. After huddling with the brothers, it was Wilson who spoke. "The question is regarding the membership of the tribe [sic] has been asked in a variety of ways," he said. "The simple answer is that the federal government recognized the tribe in the early 1900s. All the members today come from the original roll recognized by the federal government; [they are the] direct lineage of those first recognized as the Koi Nation."

Not content to let it go, a woman pressed Daniel Beltran to "give us some information about Koi Nation." His answer didn't take long. "We're one tribe. The members reside in Sonoma and Alameda counties. There are 53 [members]." He suggested that "if there are basic questions about the history of the tribe, you can see on [our] Web site."

But while it discusses the history of the Pomo people in general from thousands of years ago, the tribe's Web site (www.koination.com) says precious little about the Koi in modern times. Its leaders' "biographies" are similarly skimpy. Daniel Beltran is touted as having been "a student of the Koi Nation's history and culture" since his youth and as being "dedicated to reaching out to the greater community." But there are few other facts about him. Dino Beltran is described as "a seasoned professional" who has "held senior management positions in the hospitality and retail industries," with no mention as to where or for whom. About all that's to be learned about Carole Tapia is that she is "a mother and grandmother" who "brings many decades of experience and wisdom" to the tribal council.

In praising the team put together to work with the tribe before a civic group in December, Wilson singled out Castillo, the Sonoma State professor, as "an expert on Pomo history" who has written more than 30 books on the subject. But that appears to be misleading. Contacted by the *Weekly*, Castillo chuckled when told about the remark, saying that he has "written maybe 30 articles" -- not books -- as an academic, and that none of them was about the Koi. His one book about the Pomo in general (which did not deal with the Koi) turns out to have been a children's book of 48 pages.

The professor did, however, compile a history of the Koi Nation, at its behest, he said. But he declined to talk about it, citing a "confidentiality agreement" with the tribe. "There's so much controversy over the tribe's seeking land [for the casino]. What they don't want is a bunch of

hostile reporting."

The tribe's reticence is perhaps understandable, considering the controversial manner in which Gover enabled it to attain recognition. In reaffirming the Koi by fiat, Gover ignored a benchmark criterion that BIA has long considered essential before officially recognizing entities claiming to be tribes: that is, whether such groups can show "continuous existence from historical times to the present."

"What that means," says Fleming, BIA's acknowledgment chief, "is that there has to be evidence that an entity has maintained tribal relations between members; that not only were there tribal leaders, but that those leaders exercised political authority and that the members followed the direction of the leaders' governance continuously through time."

Asked whether Lower Lake Rancheria/ Koi Nation meets that test in his view, he replies, "I think my memo speaks for itself." Others are more direct. "I don't call [the Koi Nation] a tribe, and I do not believe that Kevin Gover had legal authority to do what he did," says William Wirtz, 67, the retired former deputy solicitor in BIA's Pacific regional office for nearly two decades.

The Koi trace their origins as a recognized tribe to 1916, the year the federal government bought 140 acres known as Purvis Flats near the present-day town of Clearlake in Lake County -- about 130 miles north of San Francisco -- and designated it as the Lower Lake Rancheria. But the land wasn't good for much. Even a BIA official referred to it as "a rock pile." According to records on file at the National Archives regional center in San Bruno, despite being purchased decades earlier for "the benefit of the landless Indians residing in the immediate vicinity," it remained uninhabited until a handful of Indians took up residence there in the 1940s.

Those records show that Harry Johnson and his wife, Isabella, who occupied a shack on 41 acres of the property, were considered to be the only two Indians living there in 1953 when Lake County expressed interest in acquiring the land for an airport. A special Act of Congress in 1956 enabled the county to obtain 99 acres for the airport. At the same time, the 41 acres occupied by the Johnsons became their private property after they agreed to accept it as a "gift" from the government. As far as the federal government was concerned, Lower Lake Rancheria ceased to exist.

If there is evidence to show that the tribe maintained continuous governance either before or after the land was lost, the Koi Nation's leaders have not yet seen fit to make it public. Indeed, assuming an earlier tribal government existed, there is evidence to suggest that it wasn't revived until 1994. That's when Dino Beltran, presenting himself as the tribe's chairman, appeared before Lake County officials after they announced plans to close the airport, asserting the tribe's rights to the land. Beltran told the Board of Supervisors that a benefactor whom he declined to name was willing to front the tribe enough money to make an offer. (The property ended up being sold to the town of Clearlake.)

But according to a 1994 memo prepared for the tribe by a legal firm acting on its behalf, a copy of which was obtained by the *Weekly*, there was apparently no Koi tribal government in place until the Beltrons helped organize one after the airport sale talk began. "It is our understanding that the Koi people had not formed an active government functioning as the 'Lower Lake Rancheria Interim Council' until this year," says the memo, prepared at California Indian Legal Services, which advocates for Native American rights. "The impetus for the formation of the government appears to have been the realization that the Tribe may have rights to the land that is currently Pearce Field Airport."

Although she doesn't have much to say one way or the other about Gover, Rosemary Cambra wonders what a tribe that claims Lake County as its aboriginal birthplace is doing trying to establish a "reservation" in Oakland. "I don't object to them wanting to put up a casino," says the leader of the Muwekma Ohlone, a tribe whose ancestral lands include San Francisco and the East Bay, and which has been fighting for federal recognition for years. "It's just the wrong place for them to be doing business."

Apparently, a lot of other people feel the same way. Besides Oakland's City Council, the Alameda County Board of Supervisors and the city councils of Berkeley, Alameda, and San Leandro are all on record as opponents of the casino. As such, their resolutions have been forwarded to the Bureau of Indian Affairs, which has begun the first in a string of bureaucratic processes that could take several years before the interior secretary ultimately decides the fate of the property.

Meanwhile, the tribe's handlers appear to be positioning the Koi to fight as the home team.

During presentations before community groups, Wilson, the tribe's minder, has for some months shown a slide that purports to be a map of traditional Pomo homelands covering a wide swath of Northern California. On such occasions, he has explained the tribe's connection to Oakland and the East Bay as their being part of Pomo "trade routes" for the sale of such items as clamshell beads and obsidian.

But when benefactor in chief Gover appeared before Oakland's City Council in January, he made a bold new assertion that critics, including San Jose State University ethnologist Alan Leventhal, were quick to dismiss as "astonishing" and "just plain wrong."

Suggesting that Lake County was merely the area to which the Koi were "assigned by federal policy during an unfortunate time in American history," Gover concluded, "So part of our evidence in this case is to examine just what were their original lands. We maintain that those lands were in the East Bay."

He spoke with the conviction of someone with dollar signs in his eyes.