

**Prepared Statement
of the Honorable Dustin Klatush, Chairman
Confederated Tribes of the Chehalis Reservation**

Subcommittee on Indian and Insular Affairs

Oversight Hearing on “Unlocking Indian Country’s Economic Potential”

March 1, 2023

Thank you, Chair Hageman, Ranking Member Leger-Fernandez, and members of the Committee for holding this oversight hearing. My name is Dustin Klatush and I am the Chairman of the Confederated Tribes of the Chehalis Reservation (the “Tribe”). My testimony will focus on the Chehalis Tribe’s recommendations to promote and eliminate barriers to tribal economic development.

The Chehalis Reservation was created by Executive Order in 1864 and is located between the confluence of the Chehalis River and the Black River. Geographically, the Tribe is located approximately halfway between Seattle and Portland off Interstate 5. Southwest Washington has long been an economically depressed area lacking in businesses and jobs for Tribal members and non-Indians alike.

The Tribe was, and is, a fishing tribe, and diminished fish runs have made fishing more difficult every year. In the 1970s before economic development became possible, Chehalis tribal fishermen earned, on average, \$1900 a year. This required many tribal members to work off-reservation for the state government or for non-Indian businesses to provide for their families.

The Tribe operates a casino but is always looking for ways to diversify its economic base to continue to support education, health, housing, safety, and other services for its members. Approximately 40 percent of Chehalis tribal members are under the age of 18 and will need jobs in the future.

Most of the Tribe’s 4,800-acre land base is in a flood plain and the Tribe has very little land suitable for economic development. For this reason, the Tribe has had to be innovative with the land that it has to maximize its ability to generate revenue and to provide for our citizens. In this regard, the Chehalis Tribe is proud to have constructed the first Great Wolf Lodge waterpark in Indian country in 2008.

The Tribe has the following recommendations for the Committee to consider:

I. ALLOW ALL INDIAN TRIBES TO ENTER INTO 99-YEAR LEASES

In the final days of the 117th Congress, the House approved S.3773, a bill that amended the Long-Term Leasing Act of 1955 to add the Chehalis Tribe to the list of Indian tribes for which the Secretary of the Interior is authorized to approve leases with terms of up to 99 years. House passage sent the bill to the President, who signed S.3773 into law on January 5, 2023.

The Tribe was, and remains, interested in developing warehouse facilities on two parcels of its reservation trust land. The warehouses would serve supply chain needs between the cities of Seattle, Tacoma, Olympia, and Portland. The Tribe had received two letters of intent for developing the facilities from outside developers, but both proposals would have required leases

with terms longer than the 25 initial term and the single 25-year extension allowed under the Long-Term Leasing Act.

The Tribe promptly began working with the Washington state congressional delegation to get House and Senate bills introduced as quickly as possible to add the Chehalis Tribe to the statute. The Tribe's goal was to secure the amendment into law by the end of the 117th Congress not only to maintain the interest of the outside developers, but also to enable the Tribe to secure a lease and begin construction during the Pacific Northwest construction season.

Historically, for an Indian tribe to enter 99-year leases, Congress has legislatively added the tribe's name at the end of the pertinent clause in the Long-Term Leasing Act. These have always been treated as ministerial, non-controversial bills, because they simply allow the Secretary to approve leases of up to 99 years, but do not require it. The Chehalis Tribe was hopeful that its bill could steadily progress through the legislative process.

What ended up occurring, however, was a protracted situation where all Indian-related bills were being held in the Senate for reasons unrelated to the merits of the bills themselves. Months dragged on with no Senate floor movement on nearly all Indian-related standalone bills, including S.3773. Finally, the logjam began to break the second week of December 2022 and individual bills were able to be considered on the Senate floor. The Chehalis Tribe was fortunate to have been able to have its bill approved by the Senate on December 20, 2022, and the House passed the bill on December 22, 2022. The clock could have easily run out, however, and the Tribe would have had to start anew in the 118th Congress.

Since the Tribe's bill was signed into law in early January, the Tribe has reengaged with the third-party developers it was communicating with previously and hopes to have a deal in place soon and begin construction this year.

During its efforts to secure enactment of its 99-year lease bill, the Tribe advocated for a going-forward amendment to the Long-Term Leasing Act to ensure that any Indian tribes that needed longer term leases would not need to pursue individual bills that are subject to the vagaries of Congress.

While the Chehalis Tribe was ultimately successful, it does not believe that individual bills to add tribes to the statute is a good use of the tribes' or Congress's time and resources. Given our experience, we urge Congress to amend the Long-Term Leasing Act to allow all federally recognized Indian tribes the option to enter into leases with terms of up to 99 years.

II. OTHER FEDERAL LAWS EITHER REMAIN OBSTACLES TO TRIBAL ECONOMIC DEVELOPMENT OR CAN BE IMPROVED

Various laws in the U.S. Code that are in this Committee's jurisdiction are either impediments to tribal economic development or could be amended to make them more useful to tribes. The Chehalis Tribe has firsthand experience in this regard when, in January of 2018, it was informed that an 1834 law that prohibited construction of distilleries in Indian country likely prohibited the Tribe's plans to begin construction on its long-awaited distillery project.

The law in question, which had never been enforced, was part of the 1834 Non-Intercourse Act and prohibited construction of distilleries in Indian country. The law charged Indian agents with responsibility to "destroy and break up" such distilleries in their respective

Indian agencies. The law even provided that in breaking up distilleries, “it shall be lawful to employ the use of the military force of the United States.”

Not desiring war, the Chehalis Tribe instead turned to the Washington state delegation and this Committee for assistance in repealing the law. From introduction to enactment, the process took only nine months, which is a testament to the bipartisan recognition that these types of outdated laws should not be allowed to impede progress. In 2020, the Tribe opened the Talking Cedars brewery and distillery, which is the first ever legal distillery in Indian country and the largest craft distillery west of the Mississippi River. This success could not have happened had the 1834 law not been repealed by Congress.

There are other laws that could and should be repealed or updated. As the Committee is aware, a separate provision of the Non-Intercourse Act requires Congress’s consent to alienate Indian land. The provision has been interpreted by some courts as applying to fee land that an Indian tribe purchases on the open market, which has caused some tribes delays or difficulties in obtaining financing for economic development projects. This is another example of an antiquated law that could be amended to eliminate unintended impacts.

A separate law that can be updated to make it more effective is the Buy Indian Act, which is within this Committee’s jurisdiction. The Buy Indian Act provides the Department of the Interior and certain agencies within the Department of Health and Human Services (“HHS”) with the authority to set aside certain contracts for Indian-owned and controlled businesses. The Act does not extend to other federal agencies, however.

The Chehalis Tribe is in the early stages of seeking to supply neighboring military installations with products from its Talking Cedars distillery. Currently, the Buy Indian Act does not apply to departments outside of Interior or HHS, which is a potential complicating factor in working with Department of Defense procurement officials. Expanding the Buy Indian Act to other federal agencies would benefit Indian country and promote tribal economic development.

I thank the Committee for allowing me to provide testimony today and look forward to answering any questions.
