

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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CORTINA INTEGRATED WASTE  
MANAGEMENT, INC.

Plaintiff,

v.

UNITED STATES DEPARTMENT OF THE  
INTERIOR, *et al.*,

Federal Defendants, and

KLETSEL DEHE WINTUN NATION OF THE  
CORTINA RANCHERIA,

Defendant-Intervenor.

No. 2:24-cv-03014 WBS AC

MEMORANDUM AND ORDER RE:  
CROSS-MOTIONS FOR SUMMARY  
JUDGMENT

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Plaintiff Cortina Integrated Waste Management, Inc.  
("CIWMI") brought this action against the United States

1 Department of the Interior, the Bureau of Indian Affairs ("BIA"),  
2 the Interior Board of Indian Appeals ("IBIA"), and agency  
3 employees (together, the "federal defendants") alleging that the  
4 IBIA violated the Administrative Procedure Act ("APA") by  
5 arbitrarily and capriciously affirming the BIA's decision to  
6 terminate a lease between CIWMI and defendant-intervenor Kletsel  
7 Dehe Wintun Nation of the Cortina Rancheria (the "Tribe").  
8 (First. Am. Compl. ("FAC") (Docket No. 1).) Plaintiff, the  
9 federal defendants, and the Tribe have moved for summary judgment  
10 on plaintiff's sole claim under the APA. (Docket Nos. 22, 27,  
11 28.)

12 I. Factual and Procedural Background

13 This dispute traces its origins to 1995, when CIWMI and  
14 the Tribe first entered into a lease. (Administrative Record  
15 ("AR") 1350). Pursuant to this lease, the Tribe would provide  
16 land on its reservation upon which CIWMI would develop, build,  
17 and operate a waste management facility. (See id.) The lease  
18 was amended, restated, and approved by the BIA in October 2000.  
19 (Id. at 1350, 4169.) The BIA affirmed its approval of the lease  
20 in 2003 following an unsuccessful challenge by the County of  
21 Colusa. (Id. at 1349.)

22 CIWMI and the Tribe executed a second amended lease  
23 that made "technical and updating amendments that d[id] not  
24 affect the business terms of the [original] lease" in April 2003.  
25 (Id. at 4099, 4104). The BIA approved the second amended lease  
26 in January 2007. (Id. at 4099.)

27 Several provisions of the second amended lease underlie  
28 the instant action. (See id. at 4099.) The court describes

1 these provisions before turning to the procedural history of the  
2 parties' dispute.

3 a. The Lease

4 The lease contained an initial term of 25 years with an  
5 option for CIWMI, at its sole discretion, to renew the lease for  
6 an additional 25 years. (Id. at 1350, 3285, 4118.) While the  
7 lease did not include any concrete deadlines for performance, it  
8 included a clause stating that "time is agreed to be of the  
9 essence in the performance of each of the terms and conditions of  
10 the [l]ease." (Id. at 4245, 4149.)

11 The lease enumerated events of default permitting its  
12 termination, including CIWMI's "default in the performance of any  
13 material covenant . . . to be performed or observed pursuant to  
14 the terms of this Lease." (Id. at 4149-50.) The lease also  
15 specified that "[t]he failure of CIWMI to comply" with any of its  
16 obligations shall not constitute an event of default "if the  
17 failure results from [e]xcusable [d]elay." (Id. at 4152.) The  
18 lease defined "[e]xcusable delays" as "any cause or condition  
19 beyond a party's control which such party is unable to overcome  
20 by the exercise of reasonable diligence or effort, including but  
21 not limited to" conditions such as "major fire, flood, . . . and  
22 other acts of the elements," "prohibitory . . . action by any  
23 civil or military authority," "incapacitating labor dispute[s],"  
24 "riot, insurrection, sabotage, or war," and "massive breakdown of  
25 or damage to any facilities or equipment . . ." (Id. at 4107.)

26 The lease also provided that "[t]he parties agree to  
27 cooperate fully with each other and to act reasonably, in good  
28 faith, and in a timely manner." (Id. at 4118.)

1           Lastly, the lease stated that it "shall be construed  
2   according to the principles of the contract laws of the State of  
3   California." (Id. at 4161.)

4           b.   Procedural History

5           In 2013, the Tribe asked the BIA to terminate the lease  
6   on the grounds that CIWMI violated a warranty under the lease  
7   regarding adverse litigation. (See FAC at 15.) The BIA agreed  
8   and issued a notice of cancellation on August 19, 2013. (Id. at  
9   15-16.) CIWMI successfully appealed the BIA's notice of  
10   cancellation to the IBIA, which concluded that the "the grounds  
11   on which the [BIA] cancelled the Lease [we]re unsupported by the  
12   terms of the Lease and the administrative record." (Id. at 16.)  
13   The lease remained effective during the pendency of the IBIA  
14   appeal. 25 C.F.R. § 162.470(b).

15           On July 10, 2018, the Tribe sent the BIA a second  
16   request to terminate the lease arguing that "[u]nder the terms of  
17   the lease and applicable law, CIWMI's failure to complete the  
18   [p]roject within a reasonable period of time constitutes grounds  
19   for termination." (AR 4349.) Specifically, the Tribe contended  
20   CIWMI's failure to timely construct the facility was a material  
21   breach of the lease that could not be cured within a reasonable  
22   time and therefore merited termination of the lease. (See id. at  
23   4352-57.) The BIA agreed and issued a Notice of Decision and  
24   Termination on March 1, 2019, in which it concluded that CIWMI  
25   had materially breached the "time is of the essence" clause.  
26   (Id. at 1337.) CIWMI appealed the BIA's decision on April 4,  
27   2019. (Id. at 1342.)  
28

1           On June 27, 2024, the IBIA, too, found CIWMI had  
2 materially breached the lease's "time is of the essence" clause  
3 and accordingly affirmed the BIA's decision to terminate the  
4 lease. (Id. at 0012, 0039-42.) The IBIA concluded CIWMI was  
5 required to perform its obligations under the lease within a  
6 reasonable time (id. at 0016-17); a reasonable time for  
7 performance consisted of between 10 to 17 years (id. at 0021-23);  
8 CIWMI did not and could not meet this deadline for performance  
9 (id. at 0023-29); CIWMI's delay was not excused by delays in  
10 obtaining the regulatory approval required to build the facility  
11 or by any actions of the Tribe (id. at 0029-35); and CIWMI's  
12 delays constituted a material breach of the lease's "time is of  
13 the essence" clause, warranting termination (id. at 0036-39.)

14           CIWMI now challenges the IBIA's decision under the APA,  
15 5 U.S.C. § 701 et seq.

## 16   II. Legal Standard

17           "A motion for summary judgment may be used to review  
18 agency administrative decisions within the limitations of the  
19 APA." Yu An v. Napolitano, 15 F. Supp. 3d 976, 981 (N.D. Cal.  
20 2014). Ordinarily, summary judgment is proper "if the movant  
21 shows that there is no genuine dispute as to any material fact  
22 and the movant is entitled to judgment as a matter of law." Fed.  
23 R. Civ. P. 56(a). However, when a "[p]laintiff challenges the  
24 final decision of an administrative agency, the Court does not  
25 utilize the standard analysis for determining whether a genuine  
26 issue of material fact exists." California RSA No. 4 v. Madera  
27 Cnty., 332 F. Supp. 3d 1291, 1301 (E.D. Cal. 2003) (Snyder, J.).  
28

1 Instead, a court determines "whether or not as a matter of law  
2 the evidence in the administrative record permitted the agency to  
3 make the decision it did." Occidental Eng'g Co. v. I.N.S., 753  
4 F. 2d 766, 769 (9th Cir. 1985).

5 Under the APA, a reviewing court must uphold an agency  
6 action unless it is found to be "arbitrary, capricious, an abuse  
7 of discretion, or otherwise not in accordance with the law." 5  
8 U.S.C. § 706(2)(A). "This deferential standard is designed to  
9 ensure that the agency considered all of the relevant factors and  
10 that its decision contained no clear error of judgment." Pac.  
11 Coast Fed'n of Fishermen's Ass'n, Inc. v. Nat'l Marine Fisheries  
12 Serv., 265 F. 3d 1028, 1034 (9th Cir. 2001) (citation and  
13 quotation marks omitted).

14 Accordingly, "[a]gency action should be overturned only  
15 when the agency has 'relied on factors which Congress has not  
16 intended it to consider, entirely failed to consider an important  
17 aspect of the problem, offered an explanation for its decision  
18 that runs counter to the evidence before the agency, or is so  
19 implausible that it could not be ascribed to a difference in view  
20 or the product of agency expertise.'" Id. (quoting Motor Vehicle  
21 Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co., 463 U.S. 29, 43  
22 (1983)). The court must thus "ask whether the agency considered  
23 the relevant factors and articulated a rational connection  
24 between the facts found and the choice made." Nat. Res. Def.  
25 Council v. U.S. Dep't of the Interior, 113 F. 3d 1121, 1124 (9th  
26 Cir. 1997) (citation and quotation marks omitted).

27 "[W]e review an agency's factual findings for support  
28 by substantial evidence." Louisiana-Pac. Corp., W. Div. v.

1 N.L.R.B., 52 F. 3d 255, 258 (9th Cir. 1995). Under this  
2 standard, "we must defer to the agency's finding[s] . . . unless  
3 the evidence in the record would compel a reasonable finder of  
4 fact to reach a contrary result." Ursack Inc. v. Sierra  
5 Interagency Black Bear Grp., 639 F. 3d 949, 958 (9th Cir. 2011)  
6 (emphasis in original). Put differently, "[i]f the evidence is  
7 susceptible to more than one rational interpretation, we may not  
8 substitute our judgment for that of the agency." Gebhart v.  
9 S.E.C., 595 F. 3d 1034, 1043 (9th Cir. 2010). Further, "[w]hen  
10 determining if substantial evidence supports an agency's factual  
11 finding, 'weighing the evidence is not the court's function.'" Dist. Hosp. Partners, L.P. v. Sebelius, 932 F. Supp. 2d 194, 199  
12 (D.D.C. 2013) (quoting United Steel, Paper & Forestry, Rubber,  
13 Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union v.  
14 Pension Ben. Guar. Corp., 707 F. 3d 319, 325 (D.C. Cir. 2013)).

### 16 III. Discussion

17 CIWMI argues the IBIA's order erroneously determined  
18 that (1) the lease required CIWMI to build and begin operating  
19 the waste management facility within the "reasonable time,"  
20 which, given the circumstances, was 10 to 17 years; (2) CIWMI  
21 failed to fulfill this obligation and accordingly committed a  
22 material breach of a material term of the lease; and (3) CIWMI's  
23 delays were not "excusable delays" as defined by the lease. (See  
24 Docket No. 22-1 at 20-21.) The court addresses each contention  
25 in turn.

#### 26 a. Time for Performance

##### 27 i. Reasonable Time Requirement

28

1 CIWMI first argues the IBIA “erroneously held that the  
2 lease required CIWMI to build and begin operating the facility  
3 within a ‘reasonable time.’” (Docket No. 22-1 at 20.) The lease  
4 terms provide that California law governs. (AR 4161.)

5 Under California law, “[i]t is well-established that  
6 where a contract does not specify a time for performance, the  
7 party is obliged to perform within a reasonable time.” Jarose v.  
8 Cnty. of Humboldt, No. 18-cv-07383 RS, 2022 WL 1601407, at \*21  
9 (N.D. Cal. Mar. 17, 2022); see also Henry v. Sharma, 154 Cal.  
10 App. 3d 665, 669, 201 Cal. Rptr. 478, 480 (Ct. App. 1984).

11 The IBIA concluded that, under California law, in the  
12 absence of a deadline for performance specified within the lease,  
13 CIWMI was required to build and begin operating the waste  
14 management facility within a reasonable time. (AR 0017-0019.)  
15 The IBIA’s conclusion that CIWMI was required to build and begin  
16 operating the facility within a reasonable time was correct as a  
17 matter of law, see, e.g., Jarose, 2022 WL 1601407, at \*21, and  
18 therefore was not arbitrary and capricious. Cf. Warmuth v.  
19 F.D.I.C., No. cv-08-06222 MMM AJWX, 2011 WL 5553897, at \*12 (C.D.  
20 Cal. Nov. 14, 2011) (because agency’s findings were correct,  
21 “agency did not act arbitrarily or capriciously.”).

22 ii. What Constitutes a Reasonable Time

23 CIWMI next argues the IBIA’s determination that 10 to  
24 17 years constituted a reasonable time to build and begin  
25 operating the facility was also arbitrary and capricious. (See  
26 Docket No. 22-1 at 22-23.)

27 “What constitutes a ‘reasonable time’ for performance  
28 is a question of fact” that “depends on the circumstances of each

1 case." Consol. World Invs., Inc. v. Lido Preferred Ltd., 9 Cal.  
2 App. 4th 373, 380, 11 Cal. Rptr. 2d 524 (1992). As explained  
3 above, we review agencies' factual findings deferentially. See,  
4 e.g., Ursack, 639 F. 3d at 958.

5 The IBIA first affirmed the BIA's conclusion that a  
6 "reasonable time" for performance must be less than 25 years.  
7 (AR 0021-22.) The IBIA found reasonable the BIA's conclusion  
8 that, because the lease provided an initial term of 25 years, the  
9 parties meant for the facility to be operational in less than 25  
10 years to avoid "leaving little opportunity for benefits to accrue  
11 to the Tribe." (Id.)

12 Next, the IBIA found that the BIA relied on substantial  
13 evidence, including an expert report, to rationally conclude that  
14 the facility should have taken between 10 and 17 years to  
15 construct. (Id. at 0022.) The expert report was prepared by the  
16 Tribe's consultant, Tetra Tech. (Id.) At the time of the  
17 report's commission, Tetra Tech possessed "more than 30 years of  
18 experience in the permitting, design, and construction of solid  
19 waste landfill facilities in California." (Id.) Tetra Tech  
20 determined that a reasonable time for building and opening the  
21 facility would be 10 to 17 years. (Id.)

22 Tetra Tech arrived at this determination by considering  
23 the amount of time it would take to (1) determine a regulatory  
24 framework for obtaining necessary approvals and conduct a  
25 financial feasibility study; (2) develop a basis of design for  
26 the facility; (3) perform an engineering analysis; (4) prepare a  
27 preliminary facility design; (5) prepare a project description;  
28 (6) initiate a public relations campaign; (7) complete review

1 under the California Environmental Quality Act ("CEQA") and the  
2 National Environmental Policy Act ("NEPA"); (8) obtain a  
3 conditional use permit if necessary; (9) obtain other required  
4 permits; (10) and construct and open the facility. (See id. at  
5 4593-4601.) Tetra Tech estimated that it would take between one  
6 to two years to accomplish items (1) through (5); three to five  
7 years to accomplish items (6) through (8); two to three years to  
8 accomplish item (9); and one to two years to accomplish item  
9 (10), assuming adequate water supply and access to the facility.  
10 (See id. at 4593-94.)

11 In preparing its report and the estimates therein,  
12 Tetra Tech relied on site-specific documentation such as studies  
13 regarding the construction of the facility, environmental review  
14 documents, the lease between CIWMI and the Tribe, and  
15 correspondence from various agencies. (See id. at 4589.) For  
16 example, Tetra Tech conducted a detailed analysis of the  
17 project's various regulatory requirements and found that  
18 developing a "coalition of agencies" (state and federal) whose  
19 approvals were necessary to construct the facility would have  
20 "laid a foundation for an efficient . . . review and approval  
21 process" that would have enabled CIWMI to comply with applicable  
22 regulations "concurrently," thereby saving significant time.  
23 (Id.)

24 Tetra Tech drew upon its decades of expertise in the  
25 construction of similar landfill facilities in California to  
26 estimate that it typically takes between one to two years to  
27 construct and open any landfill facility in California, assuming  
28 adequate water supply and access to the facility. (Id. at 4569,

1 4593.) Tetra Tech also relied on its experience obtaining the  
2 required "permitting" for landfill facilities in California (id.  
3 at 4569) in finding that the additional "layer of permitting and  
4 approvals" required from entities such as the EPA and the County  
5 of Colusa because the facility was to be constructed on tribal  
6 lands would necessitate three to five more years of time for the  
7 facility to be built and operationalized. (Id. at 4594.)

8 The BIA "independently reviewed" Tetra Tech's time  
9 estimate and found it to be "reasonable" based on the "BIA's  
10 experience with approvals for complex and controversial projects  
11 on Indian Lands in California." (Id. at 0022-23.) "Taking all  
12 of this together," the IBIA concluded the BIA had "rationally  
13 decided" that "it should have taken between 10 and 17 years to  
14 build and begin operating" the facility "based on substantial  
15 evidence in the administrative record." (Id. at 0023.)

16 The evidence in the record does not compel the court to  
17 overturn the IBIA's finding that 10 to 17 years was a reasonable  
18 time for CIWMI to build and begin operating the facility. See  
19 Ursack, 639 F. 3d at 958. CIWMI argues that the IBIA erred by  
20 failing to consider "the duration of the lease, the substantial  
21 delay by the regulatory agency, and the Tribe's lack of good  
22 faith and multiple attempts to terminate the lease." (Docket No.  
23 22-1 at 23.)

24 But the IBIA did consider these factors (see AR 0021-  
25 22, 0030-33), so CIWMI's frustration appears to be that, in doing  
26 so, the IBIA did not reach the result CIWMI advocates. At  
27 bottom, CIWMI's contention is that the IBIA arbitrarily and  
28 capriciously determined the duration of a "reasonable time"

1 because it “failed to properly weigh the substantial evidence in  
2 the record demonstrating the steps CIWMI ha[d] taken to obtain  
3 the required permits and the means by which EPA’s delay and the  
4 Tribe’s failure to proceed in good faith blocked CIWMI’s  
5 progress.” (Docket No. 22-1 at 23.) This argument is unavailing  
6 because “weighing the evidence is not the court’s function.”  
7 Dist. Hosp. Partners, 932 F. Supp. 2d at 199.

8 Accordingly, because the IBIA’s determination that a  
9 “reasonable time” for performance was 10 to 17 years is supported  
10 by substantial evidence, the IBIA did not act arbitrarily and  
11 capriciously in making that determination. Cf. Ursack, 639 F.3d  
12 at 958 n.4 (“[A]s a practical matter, the arbitrary and  
13 capricious standard incorporates the substantial evidence  
14 test.”).

15 b. Material Breach

16 CIWMI also argues that the IBIA incorrectly interpreted  
17 the lease’s “time is of the essence” clause. (Docket No. 22-1 at  
18 30.) CIWMI does not dispute that the “time is of the essence”  
19 clause is a material term. (See id. at 32 (referring to the  
20 “time is of the essence” clause as “the material term at issue  
21 here.”).)

22 “California law provides that delayed performance of a  
23 contract with a ‘time is of the essence’ clause constitutes a  
24 material breach.” SIC Metals, Inc. v. Hyundai Steel Co., 838 F.  
25 App’x 315, 316 (9th Cir. 2021) (citing Johnson v. Alexander, 63  
26 Cal. App. 3d 806, 134 Cal. Rptr. 101, 105 (1976), and Plotnik v.  
27 Meihaus, 208 Cal. App. 4th 1590, 146 Cal. Rptr. 3d 585, 596  
28 (2012)). “Normally the question of whether a breach of an

1 obligation is a material breach, so as to excuse performance by  
2 the other party, is a question of fact.” Brown v. Grimes, 192  
3 Cal. App. 4th 265, 277, 120 Cal. Rptr. 3d 893, 903 (2011)  
4 (collecting cases). Again, our review of an agency’s factual  
5 findings is deferential. See, e.g., Ursack, 639 F. 3d at 958.

6 The IBIA affirmed the BIA’s holding that CIWMI  
7 materially breached the lease by failing to “build and begin  
8 operating th[e] [facility] within a reasonable time.” (AR 0036.)  
9 Specifically, the IBIA reviewed *de novo* and affirmed the BIA’s  
10 findings that (1) the “time is of the essence” clause was a  
11 material term of the lease (id. at 0036-37), and (2) CIWMI  
12 materially breached this clause by failing to perform within a  
13 reasonable time (id. at 0037-38.) In the alternative, the IBIA  
14 found CIWMI committed a material breach of this clause because it  
15 failed to perform substantially: CIWMI had not “built any  
16 significant part of the landfill and ha[d] not obtained any of  
17 the necessary permits.” (Id. at 0038.)

18 The IBIA’s findings were supported by substantial  
19 evidence. See Louisina-Pac. Corp., 52 F.3d at 258. As explained  
20 in the previous section, the IBIA rationally concluded that a  
21 “reasonable time” for performance was 10 to 17 years. And the  
22 IBIA rationally determined that, based on the evidence in the  
23 record, CIWMI failed to perform within that time and thereby  
24 breached the “time is of the essence” clause. See SIC Metals,  
25 838 F. App’x at 316. Although CIWMI disputes that it materially  
26 breached the “time is of the essence” clause because it had  
27 “undertaken significant activities throughout the duration of the  
28 lease to advance the permitting of the facility” (Docket No. 22-1

1 at 31), the "evidence in the record" does not "compel a  
 2 reasonable finder of fact to reach [that] result," Ursack, 639  
 3 F.3d at 958 (emphasis removed). Accordingly, we must "defer to  
 4 the agency's finding[s]" on this point. See id.<sup>1</sup>

5 In the alternative, CIWMI argues the "time is of the  
 6 essence" clause is not enforceable because enforcing it would  
 7 "work a forfeiture" against CIWMI or allow the Tribe to "reap a  
 8 windfall." (Docket No. 22-1 at 32.) California law enables  
 9 courts to decline to enforce "time is of the essence" clauses if  
 10 enforcing them would "work a forfeiture" on a party that has  
 11 substantially performed or allow the non-breaching party to reap  
 12 a "windfall." See, e.g., Magic Carpet Ride LLC v. Rugger Inv.  
 13 Grp., L.L.C., 41 Cal. App. 5th 357, 369, 254 Cal. Rptr. 3d 213,  
 14 221 (2019).

15 The IBIA found enforcing the "time is of the essence"  
 16 clause here would not "work a forfeiture" on CIWMI because  
 17 "almost nothing ha[d] been built and no permits ha[d] been  
 18 obtained," and, correspondingly, any "alleged forfeiture" would  
 19 not "accrue to the benefit of the [Tribe]." (AR 0038.)  
 20 Similarly, the IBIA found enforcing the clause would not permit  
 21 the Tribe to reap a "windfall" because the Tribe had thus far

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22 <sup>1</sup> While the lease specifies, and the parties agree, that  
 23 California law governs subject to preemption by federal or tribal  
 24 law, federal regulations provide that a lease on tribal land can  
 25 be cancelled for any "violation," irrespective of its  
 26 materiality. 25 C.F.R. § 162.467(c). 25 C.F.R. § 162.003  
 27 provides that the materiality-indifferent definition of  
 28 "violation" in 25 C.F.R. § 162.467(c) governs regardless of how  
 "violation" or "default" is defined within the lease.  
 Accordingly, termination of the lease was appropriate here  
 regardless of whether CIWMI materially breached the lease under  
California law.

1 been "deprived of the economic benefit that it reasonably  
2 expected." (Id.) In making these findings, the IBIA "considered  
3 the relevant factors and articulated a rational connection  
4 between the facts found and the choice made." Nat. Res. Def.  
5 Council, 113 F.3d at 1124. Accordingly, the IBIA's decision to  
6 enforce the "time is of the essence" clause was also not  
7 arbitrary and capricious. See id.

8 c. Excusable Delay

9 CIWMI last argues that the IBIA improperly determined  
10 that the project's myriad delays did not constitute excusable  
11 delays because neither (1) the amount of time it took the EPA to  
12 review CIWMI's request to construct the facility, nor (2) the  
13 Tribe's purported failure to act in good faith was listed as an  
14 excusable delay within the lease. (Docket No. 22-1 at 24.)

15 The lease defines an "excusable delay" as "any cause or  
16 condition beyond a party's control which such party is unable to  
17 overcome by the exercise of reasonable diligence or effort,  
18 including but not limited to" conditions such as "major fire,  
19 flood, . . . and other acts of the elements," "prohibitory . . .  
20 action by any civil or military authority," "incapacitating labor  
21 dispute[s]," "riot, insurrection, sabotage, or war," and "massive  
22 breakdown of or damage to any facilities or equipment . . ." (AR  
23 4107.)

24 California courts have interpreted similar provisions  
25 narrowly, finding only the conditions expressly listed  
26 constituted excusable delays. See, e.g., City of Stockton v.  
27 Stockton Plaza Corp., 261 Cal. App. 2d 639, 561, 68 Cal. Rptr.  
28 266, 274 (1968); Free Range Content, Inc. v. Google Inc., No. 14-

1 cv-02329-BLF, 2016 WL 2902332, at \*6 (N.D. Cal. May 13, 2016)  
2 (applying California law). And in general, “[f]orce majeure  
3 clauses are construed narrowly and will generally only excuse a  
4 party’s nonperformance if the event that caused the party’s  
5 performance is specifically identified.” 30 Richard A. Lord,  
6 Williston on Contracts § 77:31 (4th ed. & Supp. 2024).

7 The IBIA, relying on Stockton, determined the EPA’s  
8 regulatory delay was not excusable because it (1) was not  
9 explicitly listed as an event of excusable delay in the lease,  
10 and (2) did not otherwise constitute a force majeure condition.  
11 (See AR 0030.) Stockton featured a virtually identical excusable  
12 delay clause. See 261 Cal. App. 2d at 651. Pursuant to that  
13 clause, the court held that a party’s delay in obtaining required  
14 financing was not excusable because the reason for the party’s  
15 delay was not an event listed in the contract as an excusable  
16 delay. Id. at 646-50. Given the overlap between Stockton and  
17 the instant dispute, the IBIA did not arbitrarily and  
18 capriciously conclude that, under Stockton, the EPA’s regulatory  
19 delay was not excusable. Cf. M&T Farms v. Fed. Crop Ins. Corp.,  
20 103 F.4th 724, 731 (9th Cir. 2024), cert. denied, 145 S. Ct. 1057  
21 (2025) (“afford[ing] considerable deference” to an agency’s  
22 “reasonable interpretation” of a contractual provision).

23 The IBIA next concluded the Tribe’s purported failure  
24 to act in good faith was not an excusable delay. To reach this  
25 conclusion, the IBIA addressed the implications of the Tribe’s  
26 ineffective attempt to terminate the lease in 2013 (AR 0031); the  
27 Tribe’s failure to respond to letters CIWMI sent it between  
28 November 2015 and October 2016 (id. at 0032-33); whether the

1 Tribe timely reviewed planning documents CIWMI shared with it  
2 (id. at 0032); whether the Tribe complied with the lease terms  
3 (id. at 0032-33); CIWMI's alleged diligence (id. at 0035); and  
4 the impact of any delay purportedly caused by the Tribe (id. at  
5 0033.)

6 In particular, the IBIA found the lease was in effect  
7 during the 2013 dispute (id. at 0031); the Tribe's failure to  
8 respond to letters did not constitute a breach of the lease or  
9 prevent CIWMI from pursuing other steps to build and begin  
10 operating the facility (id. at 0031-32); the Tribe timely  
11 reviewed the planning documents CIWMI shared with it (id. at  
12 0032); CIWMI's alleged diligence was immaterial to the question  
13 of whether it failed to perform within a reasonable time (id. at  
14 0035); and any delay purportedly caused by the Tribe was  
15 insignificant compared to the overall delay (id. at 0033.)  
16 Considering the foregoing, the IBIA concluded the Tribe did not  
17 "fail[] to take actions required by the Lease" or "somehow  
18 delay[] [CIWMI] from continuing to pursue the necessary permits  
19 or taking the other steps needed to build and begin operating  
20 [the] [facility] within a reasonable time." (Id. at 0032-33.)

21 The IBIA's conclusion was "based on a consideration of  
22 relevant factors and with no clear error of judgment." Rabadi v.  
23 U.S. Drug Enf't Admin., 122 F.4th 371, 373 (9th Cir. 2024), cert.  
24 denied sub nom. Rabadi v. Drug Enf't Admin., 145 S. Ct. 2846  
25 (2025) (citation modified). Accordingly, it was not arbitrary  
26 and capricious. See id.; see also Nat. Res. Def. Council, 113  
27 F.3d at 1124 (when agency "consider[s] the relevant factors and  
28

1 articulate[s] a rational connection between the facts found and  
2 the choice made," it does not act arbitrarily and capriciously).

3 IT IS THEREFORE ORDERED that plaintiff's motion for  
4 summary judgment (Docket No. 22) be, and the same hereby is,  
5 DENIED.

6 IT IS FURTHER ORDERED that defendants' summary judgment  
7 motion (Docket No. 27) and defendant-intervenor's summary  
8 judgment motion (Docket No. 28) be, and the same hereby are,  
9 GRANTED.

10 The Clerk is directed to enter final judgment in favor  
11 of defendants and defendant-intervenor and close the case.

12 Dated: October 22, 2025



13 **WILLIAM B. SHUBB**  
14 **UNITED STATES DISTRICT JUDGE**  
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