



United States Department of the Interior

Office of Hearings and Appeals

Interior Board of Land Appeals

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September 15, 2026

IBLA 2022-0020 et al.	)	UTU94469 et al.
	)	
KIRKWOOD OIL & GAS LLC	)	Onshore Oil & Gas
	)	
	)	Affirmed

ORDER*

Kirkwood Oil & Gas LLC (Kirkwood) appealed and petitioned to stay the effect of four decisions issued by the Utah State Office of the Bureau of Land Management (BLM). In two of the decisions, BLM granted in part and dismissed in part the protests filed by the Pueblo of Acoma (Pueblo) against the inclusion of certain parcels of land in, respectively, two different competitive oil and gas lease sales. The parcels at issue collectively cover approximately 7,100 acres of Federal mineral estate in San Juan County, Utah.¹ In the other two decisions, BLM decided not to issue leases for those parcels that were the subject of the successful protests and for which Kirkwood had been the high bidder at the lease sales. In this Order, we affirm BLM's decisions because Kirkwood has failed to meet its burden to show error.

BACKGROUND

On April 17, 2019, BLM initiated Tribal consultation for a competitive lease sale that would take place in September 2019, and invited the Pueblo, among other Tribes, to request "additional consultation" if desired.² On July 1, 2019, the Pueblo responded to

* This Order is binding on the parties but does not constitute Board precedent.

¹ Petition for Stay at 2 (filed Nov. 8, 2021) (Petition).

² Administrative Record (AR) 1239-47, Letter from K. Hoffman, BLM, to T. Scissons, Pueblo of Acoma at 3 (undated; file name includes "2019-04-17"). BLM produced its AR as a collection of PDF files organized into folders and consecutively Bates-stamped, accompanied by a spreadsheet index. We cite to documents in the AR by their Bates number(s) (omitting leading zeros) and identifying information, including original pagination.

BLM by requesting “immediate government-to-government consultation,” including site visits and in-person meetings.³

On July 25, 2019, BLM posted a Notice of Competitive Lease Sale (NCLS) for the September sale and offered a 30-day protest period pursuant to regulation.⁴ In the NCLS, BLM explained that if it received a protest, it would not issue a lease until the State Director resolved the protest and could withdraw the parcel from leasing and reject the bids if the protest was upheld.⁵ By letter dated August 26, 2019, the Pueblo protested the inclusion of the relevant parcels in the September 2019 lease sale based on BLM’s failure to provide adequate and meaningful Tribal consultation, among other reasons.⁶ BLM disclosed the existence of the protest by including the parcels in lists identifying pending protests and publicly posting the protest letter.⁷

BLM held the lease sale on September 9-11, 2019. Kirkwood was the high bidder for four leases: UTU94469, UTU94470, UTU94471, and UTU94476 (the September Leases).⁸

Meanwhile, on June 25, 2019, BLM had initiated Tribal consultation for another competitive lease sale to take place in December 2019, and again invited the Pueblo and other Tribes to request “additional consultation” if desired.⁹ On September 27, 2019, the Pueblo again responded to BLM’s letter with a request for “immediate government-to-government consultation,” including site visits and in-person meetings.¹⁰ BLM responded on October 22, 2019, seeking to schedule a government-to-government consultation meeting at the Pueblo and inviting the Pueblo to conduct site visits to the relevant area.¹¹

³ AR 1271-81, Pueblo of Acoma September 2019 Lease Sale Scoping Comments & Request for Consultation at 10, 8-11 (July 1, 2019).

⁴ AR 543-766, Notice of Competitive Oil and Gas Internet-Based Lease Sale (July 25, 2019) (Sep. NCLS).

⁵ *Id.* at 10 (“If we uphold a protest and withdraw the parcel from leasing, we will reject your bid and refund your first year’s rental, bonus bid, and administrative fee.”).

⁶ AR 1290-1317, Pueblo of Acoma Protest of BLM Utah- Monticello Field Office September 2019 Competitive Oil and Gas Lease Sale at 2, 20-22 (Aug. 26, 2019).

⁷ AR 1190-93, Decision, Sold but Not Issued Leases Rejected; Refund Authorized at 2 (Oct. 7, 2021) (Sep. Rejection Dec’n).

⁸ *Id.* at 1.

⁹ AR 1257-69, Letter from K. Hoffman, BLM, to T. Scissons, Pueblo of Acoma at 3 (undated; file name includes “2019-06-25”).

¹⁰ AR 1319-29, Pueblo of Acoma December 2019 Lease Sale Scoping Comments & Request for Consultation at 8-11 (Sep. 27, 2019).

¹¹ AR 1332, Letter from G. Torres, BLM, to B. Vallo, Pueblo of Acoma (Oct. 22, 2019).

On October 24, 2019, BLM issued the NCLS for the December sale and offered a 30-day protest period, again explaining the protest process and its implications for leasing decisions.¹² By letter dated November 25, 2019, the Pueblo protested the inclusion of the relevant parcels in the December 2019 lease sale based in part on BLM's failure to provide adequate and meaningful Tribal consultation.¹³ BLM responded on November 27, 2019, to follow up on the Pueblo's request for consultation,¹⁴ though no additional consultation took place at that time. BLM disclosed the existence of the protest by including the parcels in lists identifying pending protests and publicly posting the protest letter.¹⁵

BLM held the lease sale on December 10, 2019, and Kirkwood was the high bidder for two leases: UTU94676 and UTU94681 (together with the September Leases, the Leases).

The following day, BLM responded to the Pueblo's letters requesting consultation on both the September and December lease sales.¹⁶ In that letter, BLM offered to coordinate the requested consultations.¹⁷ BLM also reached out by email on May 15, 2020, again offering to facilitate consultation efforts.¹⁸ By letter dated May 20, 2020, the Pueblo requested an indefinite pause on all consultation based on the closure of relevant offices and travel restrictions due to the COVID-19 pandemic, which precluded the Pueblo's desired "in-person consultation" and "site-visitations by qualified Acoma cultural experts."¹⁹ BLM acknowledged the Pueblo's request the following month.²⁰ Well over a year later, and roughly two years after the lease sales, the Pueblo still had not fully reopened to accommodate in-person consultation or site visits.²¹

On October 6, 2021, the BLM Utah Deputy State Director issued two decisions addressing the Pueblo's protests of the September and December lease sales,

¹² AR 767-875, Notice of Competitive Oil and Gas Internet-Based Lease Sale at 8-10 (Oct. 24, 2019) (Dec. NCLS).

¹³ AR 1334-54, Pueblo of Acoma Protest of BLM Utah State Office December 2019 Competitive Oil and Gas Lease Sale at 2, 19-20 (Nov. 25, 2019).

¹⁴ AR 1356, Letter from A. Johnson, BLM, to B. Vallo, Pueblo of Acoma (Nov. 27, 2019).

¹⁵ AR 1186-89, Decision, Sold but Not Issued Leases Rejected; Refund Authorized at 2 (Oct. 7, 2021) (Dec. Rejection Dec'n).

¹⁶ AR 1357-58, Letter from A. Johnson, BLM, to B. Vallo, Pueblo of Acoma (Dec. 11, 2019).

¹⁷ *Id.*

¹⁸ AR 1361, Email from J. Chmelir, BLM, to B. Vallo, Pueblo of Acoma (May 15, 2020).

¹⁹ AR 1362-63, Letter from B. Vallo, Pueblo of Acoma, to J. Chmelir, BLM at 1 (May 20, 2020) (May 20 Letter).

²⁰ AR 1364, Email from A. Johnson, BLM, to B. Vallo, Pueblo of Acoma (June 10, 2020).

²¹ [BLM] Opposition to Petition for Stay at 11 (filed Nov. 18, 2021) (BLM Stay Opp.).

respectively.²² After summarizing the above-described events, the Deputy State Director concluded that BLM “did not provide adequate consultation with the Pueblo of Acoma” regarding either of the two lease sales and that “the Tribe’s protest, with respect to its consultation claim, is valid.”²³ Accordingly, BLM “decided not to issue leases” for the relevant parcels and declared the remainder of the Pueblo’s protests moot.²⁴

On October 7, 2021, BLM issued two decisions rejecting Kirkwood’s bids for the relevant parcels in the September and December sales, respectively.²⁵ BLM explained that it “must make a good faith effort to conduct meaningful consultation with tribes in compliance with the various laws, policy and regulations,” and that “although the Tribe requested Tribal consultation” roughly two months before each lease sale, BLM did not meaningfully respond to those requests until after the lease sales took place (i.e., on December 11, 2019).²⁶ BLM therefore had upheld the Pueblo’s protests on the grounds that it “failed to provide adequate and meaningful Tribal consultation” and “the issuance of the leases would not be lawful.”²⁷ BLM rejected Kirkwood’s bids for the Leases and authorized a refund of the filing fees, first year advance rentals, and bonus bids.²⁸

Kirkwood timely appealed and petitioned to stay all four of BLM’s decisions.²⁹ By Order dated December 16, 2021, the Board denied Kirkwood’s Petition for Stay based on its failure to demonstrate the likelihood of immediate and irreparable harm in the absence of a stay.³⁰ We also granted the Pueblo intervenor status *sua sponte* and granted Kirkwood’s motion to consolidate the appeals.³¹

²² AR 1183-85, Decision, Protest to the Inclusion of 18 Parcels in the September 2019 Competitive Oil and Gas Lease Sale Granted in Part and Dismissed as Moot in Part (Oct. 6, 2021) (Sep. Protest Dec’n); AR 1180-82, Decision, Protest to the Inclusion of 9 Parcels in the December 2019 Competitive Oil and Gas Lease Sale Granted in Part and Dismissed as Moot in Part (Oct. 6, 2021) (Dec. Protest Dec’n).

²³ Dec. Protest Dec’n at 2; Sep. Protest Dec’n at 2.

²⁴ Dec. Protest Dec’n at 2; Sep. Protest Dec’n at 2.

²⁵ Sep. Rejection Dec’n; Dec. Rejection Dec’n.

²⁶ Sep. Rejection Dec’n at 2; Dec. Rejection Dec’n at 2.

²⁷ Sep. Rejection Dec’n at 2; Dec. Rejection Dec’n at 2.

²⁸ Sep. Rejection Dec’n at 2; Dec. Rejection Dec’n at 2.

²⁹ We docketed the appeal of the Sep. Protest Dec’n as IBLA 2022-0023, the appeal of the Dec. Protest Dec’n as IBLA 2022-0022, the appeal of the Sep. Rejection Dec’n as IBLA 2022-0021, and the appeal of the Dec. Rejection Dec’n as IBLA 2022-0020.

³⁰ Order, Motion to File a Reply Granted; Motion to Consolidate Granted; Intervention Granted *Sua Sponte*; Petition for Stay Denied at 1, 6-9 (Dec. 16, 2021).

³¹ *Id.* at 5.

The Southern Utah Wilderness Alliance (SUWA) and Friends of Cedar Mesa (FCM) both moved to intervene in the appeals.³² BLM took no position on the motions to intervene³³ and Kirkwood did not respond. By Order dated January 14, 2022, the Board granted SUWA's and FCM's motions to intervene and allowed those parties to file a consolidated answer.³⁴

Kirkwood filed a Statement of Reasons,³⁵ and BLM, the Pueblo, and SUWA/FCM each filed Answers.³⁶ Kirkwood replied to the SUWA/FCM Answer.³⁷

ANALYSIS

On appeal, Kirkwood argues that “BLM arbitrarily rejected Kirkwood’s bids and granted the protests because, after determining that it did not adequately consult with the Pueblo of Acoma, BLM made no effort to cure the allegedly deficient consultation.”³⁸ It asserts that, “by remedying [the] deficient consultation, BLM could reasonably determine whether or not it could issue the Leases in light of the Pueblo of Acoma’s concerns,” so its “refusal to pursue tribal consultation is not based on a ‘rational and defensible basis,’ . . . and must be set aside.”³⁹ Kirkwood points to BLM’s outreach to the Pueblo to coordinate consultation following the lease sales as demonstrating that BLM believed the deficiencies in consultation could be cured.⁴⁰ It also emphasizes that BLM has been consulting with the Pueblo regarding other lease sales since that time.⁴¹ Kirkwood believes that “BLM should have given Kirkwood the option to elect whether to

³² See [SUWA] Motion to Intervene (filed Dec. 13, 2021); Friends of Cedar Mesa’s Motion to Intervene (filed Dec. 15, 2021).

³³ [BLM] Response to Motions to Intervene (filed Dec. 16, 2021).

³⁴ Order, Motions to Intervene Granted; Schedule Established (Jan. 14, 2022); *see also* Order, Service Completed; Briefing Schedule Amended (July 27, 2026).

³⁵ See Statement of Reasons (filed Dec. 8, 2021) (SOR).

³⁶ See BLM Answer to Statement of Reasons (filed Jan. 7, 2022) (Answer); Pueblo of Acoma’s Answer to Appellant’s Statement of Reasons (filed Jan. 7, 2022); Intervenor’s Consolidated Answer to Statement of Reasons (filed Aug. 24, 2026).

³⁷ See Reply to Intervenor’s Consolidated Answer (filed Sep. 9, 2026).

³⁸ SOR at 1; *see* Petition at 6 (“BLM arbitrarily decided not to issue the Leases. BLM could have remedied the allegedly inadequate tribal consultation but arbitrarily decided not to do so.”); *id.* at 7 (“BLM acted arbitrarily by rejecting bids for the Leases because it could have instead attempted to remedy the allegedly inadequate consultation.”).

³⁹ SOR at 2, 3 (quoting *Stanley Energy, Inc.*, 179 IBLA 8, 12-13 (2010)); Petition at 6-7 (arguing that while “BLM retains discretion to reject lease offers after competitive sale, . . . this discretion does not allow BLM to act arbitrarily or capriciously”).

⁴⁰ Petition at 8.

⁴¹ *Id.* at 9.

continue to wait for BLM to complete consultation once the Pueblo of Acoma can participate in consultation.”⁴² Accordingly, it “requests that the Board set aside and remand the Decisions to BLM with instruction that it consult with the Pueblo of Acoma to determine whether BLM can address the Pueblo of Acoma’s concerns and issue the Leases to Kirkwood.”⁴³

These appeals present no dispute over BLM’s determination that it failed to engage in adequate Tribal consultation to support the lease sales.⁴⁴ There is also no dispute over BLM’s conclusion that this failure warranted upholding the Pueblo’s protests on that issue. There is likewise no dispute over BLM’s conclusion that it could not lawfully issue the Leases in the absence of such consultation. The only dispute presented in these appeals is over whether BLM erred in deciding what actions it should take in response to those determinations—specifically, whether it should have pursued further consultation with the Pueblo in an attempt to remedy its undisputed prior failures before acting on Kirkwood’s bids.

The parties appear to agree that BLM *could* have conducted additional post-sale consultation to remedy its failures.⁴⁵ And Kirkwood argues forcefully that it *should* have done so.⁴⁶ But the question for the Board to resolve is whether it was error for BLM not to do so, and instead to reject Kirkwood’s bids. In other words, has Kirkwood shown that BLM committed a material legal or factual error with its chosen approach, or failed to consider all relevant factors and act on the basis of a rational connection between the facts found and decision made?⁴⁷

We begin from the well-established principle that BLM, as the Secretary’s delegate, has broad discretionary authority to decide whether or not to lease a parcel of

⁴² SOR at 3; *see* Petition at 10 (“At a minimum, BLM could have allowed Kirkwood to elect either to receive a refund of amounts paid or to continue to wait on completion of tribal consultation.”).

⁴³ SOR at 1.

⁴⁴ While “Kirkwood reserve[d] an argument that BLM has adequately consulted with the Pueblo of Acoma and therefore arbitrarily rejected the bids” in its petition for stay (Petition at 8 n.4), it never revisited that argument and its time to do so has passed.

⁴⁵ *See* Answer at 11 n.7 (“BLM could have conducted more robust consultation after the lease sales and, depending on the outcome of that consultation, either withdrawn the parcels or approved them for sale.”); Petition at 7 (“BLM acted arbitrarily by rejecting bids for the Leases because it could have instead attempted to remedy the allegedly inadequate consultation.”).

⁴⁶ *See* Petition at 7-9.

⁴⁷ *Williams d/b/a Tempest Expl. Co., LLC*, 196 IBLA 386, 392 (2021); *Hawkwood Energy Agent Corp.*, 189 IBLA 164, 167-68 (2017); *Barton*, 188 IBLA 331, 335 (2016).

Federal land.⁴⁸ “This discretion to refuse to lease remains even where the land has been offered for lease and a qualified applicant has been selected, surviving to the point of lease issuance.”⁴⁹ Of particular relevance here, “BLM is not required to accept the offer and issue a lease where inclusion of the parcel in the sale has been protested, and BLM thereafter decides, for sufficient reason, to uphold the protest and withdraw the parcel from leasing.”⁵⁰ This leads to the corollary principle that the acceptance of a high bid at a lease sale creates “no legal claim for, nor any vested right to the issuance” of a lease, and “the federal determination that the competitive bidder is the highest responsible qualified bidder and payments made by the bidder, result in nothing more than ‘a hope, or expectation, rather than any vested right’ or valid claim against the Government, to the issuance of a lease.”⁵¹

That said, as with any BLM decision, rejection of a high bid must have a rational basis showing that it was not arbitrary or capricious.⁵² Kirkwood has the burden on appeal to demonstrate that BLM’s decisions do not satisfy this standard by showing that BLM committed an error of law or material error in its factual analysis or that the decisions generally are not supported by a record showing that BLM gave due consideration to all relevant factors and acted on the basis of a rational connection between the facts found and the choice made.⁵³ This burden is not met by mere expressions of disagreement with BLM’s analysis and conclusions.⁵⁴

We conclude that Kirkwood has not met its burden to show that BLM failed to clear this bar with the appealed decisions. Kirkwood cites no authority for the proposition that BLM had a legal obligation to pursue further consultation to remedy its failures rather than choosing to withdraw the Leases, nor are we aware of any. To the

⁴⁸ See *Udall v. Tallman*, 380 U.S. 1, 4 (1965) (holding that the Mineral Leasing Act grants “the Secretary discretion to refuse to issue any lease at all on a given tract”); *Tempest Expl.*, 196 IBLA at 391; *Hawkwood*, 189 IBLA at 165, 169; *Barton*, 188 IBLA at 334.

⁴⁹ *Tempest Expl.*, 196 IBLA at 391; see *Hawkwood*, 189 IBLA at 165, 169-70, 173; *Barton*, 188 IBLA at 334, 336 (“We have long held that ‘[u]ntil such time as a lease actually issues, BLM always reserves the right not to lease at all.’” (quoting *SUWA*, 144 IBLA 70, 90 (1998))).

⁵⁰ *Stanley Energy*, 179 IBLA at 12; see *Cont’l Land Res.*, 162 IBLA 1, 7 (2004).

⁵¹ *Hawkwood*, 189 IBLA at 171 (quoting *W. Energy All. v. Salazar*, Case No. 10-cv-0226, 2011 U.S. Dist. LEXIS 98380 at *12, 16 (D. Wyo. June 29, 2011), *appeal dismissed* 709 F.3d 1040 (10th Cir. 2013)); see *Cont’l Land Res.*, 162 IBLA at 7 (“The offer to lease is but a hope, or expectation, rather than a valid claim against the Government.”).

⁵² *Tempest Expl.*, 196 IBLA at 391; *Hawkwood*, 189 IBLA at 167, 173; *Barton*, 188 IBLA at 334.

⁵³ *Hawkwood*, 189 IBLA at 167-68; *Barton*, 188 IBLA at 335.

⁵⁴ *Hawkwood*, 189 IBLA at 168; *Barton*, 188 IBLA at 335.

contrary, BLM guidance indicates that when BLM upholds a protest, “BLM is to withdraw the parcel by issuing a Reject Decision” and provide the high bidder the right to appeal, along with a refund.⁵⁵ The NCLS published in advance of each lease sale likewise confirmed for prospective bidders like Kirkwood that a successful protest could lead to withdrawal of the parcels from leasing and rejection of their bids.⁵⁶ Kirkwood does not dispute BLM’s determinations that it failed to engage in adequate consultation, that this provided a valid basis for upholding the Pueblo’s protests, and that the Leases could not be issued in the absence of adequate consultation. Accordingly, BLM complied with its policy and practice, and the undisputed elements of the protest decisions provided a rational basis for the bid rejection decisions.

Assuming that BLM could have completed remedial consultation instead, Kirkwood still does not show error in its failure to do so. As both BLM and the Pueblo recount, the intervention of the COVID-19 pandemic presented “extraordinary circumstances at the Pueblo resulting in unprecedented closures of all non-essential tribal departments,” including the office charged with leading consultation,⁵⁷ “prevent[ing] BLM from consulting with the Pueblo of Acoma in the manner requested by the tribe.”⁵⁸ Roughly two years after the lease sales, these circumstances persisted with no clear resolution in sight.⁵⁹ While Kirkwood identifies examples of consultation activities that have proceeded in the face of these challenges, it cites primarily to correspondence from BLM to the Pueblo inviting consultation and a single letter from the Pueblo expressing appreciation that BLM excluded certain lands of concern from leasing plans.⁶⁰ This engagement does not undermine the conclusion that the more robust forms of consultation sought by the Pueblo regarding the September and December 2019 lease sales (e.g., in-person meetings and site visits) could not be accomplished at the relevant times. After approximately two years with the status of the relevant parcels unresolved, BLM’s decision to close the books on the unissued Leases was rational.

Kirkwood’s view that BLM should have chosen to continue to pursue consultation rather than withdraw the Leases (or should have delegated that choice to Kirkwood) is simply a matter of disagreement with BLM’s exercise of discretion, which is insufficient

⁵⁵ AR 38, BLM Handbook H-3120-1 – Competitive Leases at 33 (Feb. 18, 2013).

⁵⁶ See Sep. NCLS at 10; Dec. NCLS at 9.

⁵⁷ Pueblo of Acoma’s Opposition to Appellant’s Petition for Stay at 6 (filed Nov. 22, 2021) (Pueblo Stay Opp.); *see also* May 20 Letter at 1.

⁵⁸ Answer at 12; *see also* Pueblo Stay Opp. at 6-7 (“No further action could be taken, certainly not on the Pueblo’s part.”).

⁵⁹ See BLM Stay Opp. at 11.

⁶⁰ See Petition at 9 (citing Exhibits G-I).

to establish error.⁶¹ Kirkwood argues that because inadequate consultation can be remedied, it “does not compel BLM to forgo leasing”⁶²; but this does not establish the inverse premise, i.e., that BLM is compelled to proceed with leasing where the consultation necessary to support it is possible. Accordingly, Kirkwood has not met its burden to show error in BLM’s rational basis for choosing not to continue to prolong remedial consultation under the circumstances.⁶³

Our conclusions on these issues are bolstered by the limits on our own jurisdiction. As a practical matter, Kirkwood recognizes that for its ends to be met in these appeals, the Board would need to not only set aside the appealed decisions but also instruct BLM to complete consultation with the Pueblo following remand.⁶⁴ Otherwise, the bids (and protests) would be restored to pending status and to BLM’s discretion regarding how to proceed with respect to leasing, and Kirkwood does not like how BLM previously exercised that discretion.

But this Board does not exercise supervisory authority over BLM.⁶⁵ While we have been delegated authority to review BLM decisions regarding the use and disposition of public lands and resources for error,⁶⁶ where we find such error we reverse or set aside the appealed decision. Where remand is appropriate, we return the matter to BLM for further action consistent with our ruling; but we do not direct or instruct BLM on what actions to take where it has the discretion to choose among multiple possible paths

⁶¹ *Hawkwood*, 189 IBLA at 168, 175, 177; *Barton*, 188 IBLA at 336; *Stanley Energy*, 179 IBLA at 13.

⁶² SOR at 8.

⁶³ *Cf. Stanley Energy*, 179 IBLA at 16 (stating that, where BLM identified deficiencies in its NEPA analysis after holding a lease sale, as well as a pathway to remedying those deficiencies, it could choose to reject the high bids for parcels before completing the remedial actions); *Cont’l Land Res.*, 162 IBLA at 7-8 (affirming rejection of bids so that leasing could be deferred pending “more in-depth consideration” of environmental impacts of leasing in the area).

⁶⁴ See SOR at 1.

⁶⁵ See *Knowles*, 187 IBLA 99, 101 (2016) (“[N]either the Board nor an ALJ exercises supervisory authority over BLM, and, as such, ‘cannot manage the public lands as a proxy for BLM.’” (quoting *SUWA*, 172 IBLA 183, 185 (2007)); *Yates Petroleum Corp.*, 175 IBLA 44, 48 (2008); *Def. of Wildlife*, 169 IBLA 117, 127 (2006) (“[W]e do not have general management authority over BLM.”).

⁶⁶ See 43 C.F.R. § 4.1(b)(4) (2025); *Yates*, 175 IBLA at 48; *supra* note 53 and accompanying text.

under its own delegated authority.⁶⁷ This Board has repeatedly rejected appellants' requests to include instructions to BLM regarding the actions it should take on remand in orders vacating the appealed decision.⁶⁸ Here, as discussed, BLM has delegated discretion to decide not to finalize leases for the parcels, and Kirkwood has identified no obligation to resume the consultation that would be necessary to instead proceed with leasing. Accordingly, by seeking an order to perform consultation, Kirkwood necessarily asks the Board to dictate BLM's management of its delegated discretionary decision-making authority on the relevant subjects following remand. But that is beyond our purview.

Kirkwood points to examples where the Board invalidated BLM leasing decisions based on a failure to conduct adequate consultation.⁶⁹ But the fact that the Board would set aside a decision to issue leases in the absence of adequate consultation is neither remarkable nor helpful to Kirkwood. Rather, it is entirely consistent with BLM's opposite decision here, declining to issue leases in the face of inadequate consultation. And while the Board remanded those matters to BLM with the admonition that it could not proceed with leasing unless and until adequate consultation was complete,⁷⁰ we did not otherwise purport to constrain BLM's discretion regarding how to lawfully exercise its own delegated authority on remand.

CONCLUSION

Kirkwood does not challenge BLM's conclusions that it failed to engage in adequate consultation, that the Pueblo's protests therefore had a valid basis, or that the Leases could not be issued in the absence of adequate consultation. Kirkwood challenges only BLM's choice not to issue the Leases rather than continue to pursue consultation efforts stymied for years by error and circumstance. But Kirkwood identifies no

⁶⁷ See *Yates*, 175 IBLA at 49 (“Once a matter is reviewed under 43 C.F.R. Part 4 and finally decided for the Department, there is no further delegated authority over that matter to be exercised. Unlike a court’s continuing authority over matters before it, ALJs and this Board may exercise only that authority as has been expressly delegated by the Secretary. Neither they nor we have any inherent authority or continuing jurisdiction to act beyond those strictures.”).

⁶⁸ See, e.g., *Knowles*, 187 IBLA at 101 (“[A]n ALJ’s authority does not extend to imposing conditions on BLM for how it conducts business once a decision has been remanded back to the agency.”); *Simons v. BLM*, 135 IBLA 125, 128-29 (1996) (finding that, while BLM had failed to accurately interpret a prior Board decision, the Board lacked jurisdiction to compel BLM action on remand because it “does not have supervisory authority over officials of BLM”).

⁶⁹ See Petition at 8 (citing *SUWA*, 177 IBLA 89 (2009); *SUWA*, 164 IBLA 1 (2004)).

⁷⁰ See *SUWA*, 177 IBLA at 105; *SUWA*, 164 IBLA at 28.

obligation on BLM's part to take its preferred course, nor any legal or factual errors in the rational bases for BLM's chosen course. Rather, it disagrees with how BLM exercised its delegated discretion and asks the Board to direct BLM to do so differently. It cannot prevail under either approach. Accordingly, we affirm BLM's decisions.

**MATTHEW
BALLENGER**

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Matthew T. Ballenger
Administrative Judge

I concur:

STEVEN LECHNER

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Date: 2026.09.15 08:58:26 -04'00'

Steven J. Lechner
Deputy Chief Administrative Judge