



The trial court improperly retained jurisdiction of a CEQA challenge after the City of San Diego filed a return to the peremptory writ of mandate confirming that it had rescinded the project approvals and thereby satisfied the terms of the writ.

McCann v. City of San Diego, 94 Cal. App. 5th 284 (2023).

This case is the second appeal arising from property owner Margaret McCann's dispute with the City of San Diego regarding the environmental review of a series of projects to underground utility lines. In the prior case (*McCann v. City of San Diego*, 70 Cal. App. 5th 51 (2021) ([McCann I](#))), the court held that the City's environmental review of a portion of the undergrounding projects was incomplete because the City failed to

analyze whether the projects were consistent with the greenhouse gas reduction (GHG) measures in the City's Climate Action Plan. On remand, the trial court issued a peremptory writ of mandate requiring the City to set aside the relevant project approvals and ordering that the court would retain jurisdiction, pursuant to Public Resources Code Section 21168.9(b), until it determined the City complied with CEQA.

The City rescinded the project approvals and filed a return asking the court to discharge the writ. McCann objected to the City's request, arguing that the trial court was obligated to retain jurisdiction until the City either demonstrated compliance with CEQA by preparing a legally sufficient GHG analysis or affirmatively indicated that it had abandoned the projects. The trial court agreed and declined to discharge the writ.

On appeal, the court held that the City fully satisfied the terms of the peremptory writ and the trial court therefore erred in declining to discharge it. To reach this decision, the court engaged in a straightforward analysis of Section 21168.9 of the Public Resources Code, which governs issuance of peremptory writs under CEQA.

When an agency violates CEQA, the court may issue three types of writs (or a combination thereof) in accordance with Section 21168.9(a). The court may direct an agency to: (1) void, in whole or part, a determination, finding or decision; (2) suspend certain project activities; or (3) take specific action to bring a project into compliance with CEQA. In *McCann I*, the appellate court directed the trial court to "issue a peremptory writ of mandate directing the City to set aside [its specific project approvals]" pursuant to Section 21168.9(a)(1). The trial court executed the writ as directed—it ordered the City to rescind the approvals (without requiring any further remedial action). The City's return confirming that the approvals had been set aside satisfied the plain terms of the writ.

McCann argued that Section 21168.9(b) of the Public Resources Code required that the trial court retain jurisdiction until the City completed the GHG analysis in compliance with CEQA. The court disagreed, observing that section 21168.9(b) requires that the trial court retain jurisdiction until it "has determined that the public agency has complied with *this division*" (emphasis in original). "This division" refers to the relevant grounds for issuance of a writ in Section 21168.9(a). Therefore, the trial court must retain jurisdiction only until the terms of the particular writ, as determined by the Section 21168.9(a), are fulfilled.

Here, the court did not order the City to perform any corrective action with respect to the GHG analysis under CEQA—only to rescind the project approvals. As such, the writ was satisfied and should have been discharged. Section 21168.9(b) does not permit a trial court to retain jurisdiction "in perpetuity based on the hypothetical possibility that the City moves forward with the same projects in the future."

Authors



[Taylor Jones](#)

Associate

TaylorJones@perkinscoie.com [415.344.7079](tel:415.344.7079)

Topics

[CEQA](#)

Blog series

California Land Use & Development Law Report

California Land Use & Development Law Report offers insights into legal issues relating to development and use of land and federal, state and local permitting and approval processes. [View posts by topic.](#) [Subscribe ?](#)

[View the blog](#)