

<p>DISTRICT COURT CITY AND COUNTY OF DENVER, COLORADO City and County Building 1437 Bannock Street, Rm. 256 Denver, CO 80202</p> <hr/> <p>Dianne E. Ray, in her official capacity as the Colorado State Auditor,</p> <p>Plaintiff</p> <p>v.</p> <p>The State Board of the Great Outdoors Colorado Trust Fund,</p> <p>Defendant.</p>	<p>DATE FILED: July 6, 2016 10:19 AM FILING ID: 6BBA9D7B895B8 CASE NUMBER: 2016CV32395</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><i>Counsel for the State Auditor:</i> CYNTHIA H. COFFMAN, Attorney General LEEANN MORRILL, First Assistant Attorney General* CHRISTOPHER JACKSON, Assistant Attorney General* 1300 Broadway, 6th Floor Denver, CO 80203 Telephone: (720) 508-6159/6178 Fax: (720) 508-6041 E-Mail: leeann.morrill@coag.gov christopher.jackson@coag.gov Registration Numbers: 38742 and 49202 <i>*Counsel of Record</i></p>	<p>Case No.</p> <p>Div.:</p>
<p>COMPLAINT</p>	

Plaintiff Dianne E. Ray, in her official capacity as the Colorado State Auditor (“the State Auditor”), by and through the Colorado Attorney General and undersigned counsel, submits the following Complaint:

INTRODUCTION

1. Under COLO. CONST., Art. XXVII, § 6(3), the State Board of the Great Outdoors Colorado Trust Fund, “a political subdivision of the state, ... shall be subject to annual audit by the state auditor, whose report shall be a public document.” On January 13, 2016, the State Auditor commenced her annual audit of the Board, which it refused to submit to. Accordingly, the State Auditor brings this mandamus action to compel the Board to comply with its legal duty to submit to an annual audit.

PARTIES, JURISDICTION, AND VENUE

2. Plaintiff Dianne E. Ray is a resident of the State of Colorado and currently holds the appointed constitutional office of Colorado State Auditor.

3. Defendant State Board of the Great Outdoors Colorado Trust Fund (“the Board”), is a constitutionally created political subdivision of the State of Colorado.

4. The Board is an inferior “governmental body” or “board” for purposes of C.R.C.P. (“Rule”) 106(a)(2).

5. This Court has jurisdiction over the subject matter of this action under Colo. Const. Art. VI, §9(1) and Rule 106(a)(2), or alternatively under Rule 57 and the Uniform Declaratory Judgments Law, § 13-51-101, *et seq.*, C.R.S. (2015).

6. Venue is proper in this Court under Rule 98(b)(2).

FACTUAL ALLEGATIONS

7. In the November 3, 1992 general election, the people of the State of Colorado approved Article XXVII, a citizen initiated amendment to the Colorado Constitution that created the Great Outdoors Colorado (“GOCO”) Program, with the “inten[t] that the net proceeds of every state-supervised lottery game operated under the authority of Article XVIII, Section 2 shall be guaranteed and permanently dedicated to the preservation, protection, enhancement and management of the state’s wildlife, park, river, trail and open space heritage, except as specifically provided in this article.” COLO. CONST. art. XXVII, § 1(1).

8. The GOCO Program includes (a) wildlife program grants; (b) outdoor recreation program grants; (c) program grants to specified entities for the purpose of

identifying, acquiring, and managing unique open space and natural areas of statewide significance; and (d) program grants to match local investments in acquiring, developing, and managing open space, parks, and environmental education facilities, and to encourage cooperative investments for the same purposes by other public or private entities. COLO. CONST. art. XXVII, § 1(1)(a–d).

9. To pay for the GOCO Program, Article XXVII established a GOCO Trust Fund in the state treasury and directed that a portion of “all proceeds from all programs ... operated under the authority of Article XVIII, Section 2 of the Colorado Constitution, ... net of prizes and expenses ... are set aside, allocated, allotted, and continuously appropriated ... in trust to the Board of the Trust Fund[.]” COLO. CONST. art. XXVII, §§ 2 and 3.

10. All expenditures from the Trust Fund must be made in furtherance of the GOCO Program and “[t]he Board of the Trust Fund shall have the duty to assure that expenditures are made for the purposes set forth in this section and in section 6, and that the amounts expended ... over a period of years be substantially equal[.]” COLO. CONST. art. XXVII, § 5.

11. Article XXVII established a seventeen-member Board to direct disbursements of expendable income from the Trust Fund, to administer the Trust Fund, and to administer the distribution of grants in furtherance of the GOCO Program. COLO. CONST. art. XXVII, §§ 6(1) and (2).

12. The Board is a political subdivision of the State of Colorado. COLO. CONST. art. XXVII, § 6(3).

13. The Board is subject to annual audit by the State Auditor, whose report must be a public document. COLO. CONST. art. XXVII, § (6)(3).

14. The last annual audit of the Board was for its fiscal year ending on June 30, 2015.

15. A public report of the last annual audit of the Board was issued on November 17, 2015.

16. On January 13, 2016, the State Auditor commenced her next annual audit of the Board.

17. Specifically, the State Auditor elected to conduct a performance audit of the Board, which will provide objective analysis to assist management and those

charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.

18. On January 26, 2016, the State Auditor issued an initial request for information and documents to the Board in furtherance of her annual audit.

19. On February 12, 2016, the State Auditor conducted an entrance conference with the Board's representatives to explain the audit process.

20. Since then, the Board has refused or failed to submit to the annual audit commenced by the State Auditor based on the belief that she lacks the authority to conduct a performance audit of the Board and that the Board has no legal duty to submit to the performance audit she commenced.

21. Specifically, the Board has refused or failed to fully respond to the State Auditor's initial request for information and documents.

22. The Board also refused to allow the State Auditor's staff to interview its staff or members after receiving a request to do so in February 2016.

23. The Board further refused or failed to respond to additional questions submitted by the State Auditor's staff on February 24, 2016.

24. The Board likewise refused or failed to respond to a subsequent information request sent by the State Auditor's staff on March 29, 2016.

25. Due to the Board's refusals or failures, an audit scoping meeting between the Board's staff and representatives and the State Auditor's staff scheduled for May 13, 2016, was canceled.

26. There is no other remedy available to the State Auditor to compel the Board's performance of the acts required of it by law.

FIRST CLAIM FOR RELIEF
[Mandamus under C.R.C.P. 106(a)(2)]

27. The State Auditor hereby incorporates the allegations contained in paragraphs 1 through 26 above as if recited herein.

28. Rule 106(a)(2) authorizes this Court to grant mandamus relief when an inferior governmental body or board charged with performing an official duty fails or refuses to act.

29. The Board is an inferior governmental body or board.

30. The Board has a legal duty to submit to an annual audit by the State Auditor.

31. The State Auditor commenced an annual audit of the Board on January 13, 2016.

32. The Board has refused or failed to submit to the annual audit commenced by the State Auditor.

33. There is no other remedy available to the State Auditor.

SECOND CLAIM FOR RELIEF
[In the alternative, declaratory and injunctive relief
under C.R.C.P. 57 and C.R.S. § 13-51-101]

34. The State Auditor hereby incorporates the allegations contained in paragraphs 1 through 33 above as if recited herein.

35. Alternatively, if mandamus relief is not available, then the State Auditor seeks a declaration of the scope of her power to conduct a performance audit as her annual audit of the Board, and the extent of the Board's duty to submit to same.

36. The State Auditor further seeks an injunction requiring the Board to fully submit to the performance audit she commenced on January 13, 2016.

PRAYER FOR RELIEF

WHEREFORE, the State Auditor respectfully requests that this Court grant the following relief:

- A. Enter an order, in accordance with Rule 106(a)(2), compelling the Board to submit to the performance audit commenced by the State Auditor on January 13, 2016, without further delay or obstruction; or, alternatively,

- B. Enter an order, in accordance with Rule 57 and C.R.S. § 13-51-101, declaring that the State Auditor has the power to conduct a performance audit of the Board, and that the Board has a duty to submit to same; and
- C. Enter an order, in accordance with Rule 57(h) and C.R.S. § 13-51-112, enjoining the Board from further refusing or failing to submit to the performance audit commenced by the State Auditor on January 13, 2016; and
- D. Grant such other and further relief as this Court deems just and proper.

DATED: July 6, 2016.

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