

Appendix 1

Noll v. United States, 1:92-CV-282-HLR (D. Idaho)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

CLIFFORD L. NOLL and SUSAN J. NOLL,)
husband and wife,)

Plaintiff,)

vs.)

BETTY YOUNG, Revenue Officer,)
Dept. of Treasury-Internal Revenue)
Service, and JAY HAMMER, Disclosure)
Officer for Internal Revenue Service-)
Dept. of Treasury, and GERALD R. RYAN,)
Special Assistant to the Assistant)
Chief Counsel (Disclosure Litigation))
Dept. of the Treasury-Internal)
Revenue Service.)

Defendants.)

FILED
U.S. DISTRICT COURT

1992 JUL 21 A 11:17 JB

DISTRICT OF IDAHO
CAMERON S. BURKE

CIV 92-0282 S-EJC
CIVIL NO. _____

COMPLAINT



Certified to be a true and correct copy of original filed in my office.

Elizabeth A. Smith, Clerk
U.S. Courts, District of Idaho

By Sunny Trumbull
on Jul 23, 2015 3:55 pm

This matter arises under Positive Law of the United States, namely Title 5 of the United States Code.

Comes now the plaintiffs, Clifford L. Noll and Susan J. Noll, husband and wife, who's mailing address is 715 N. 13th St., Coeur d'Alene, Idaho 83814, setting forth the following complaint;

1. A.) Title 5 U.S.C. sect. 556(d), provides as follows: "When jurisdiction is challenged the burden of proof is on the government." The plaintiffs, Clifford L. Noll and Susan J. Noll, sought written proof of jurisdictional authority claimed by the Dept. of the Treasury-Internal Revenue Service over the plaintiffs, Clifford L. Noll and Susan J. Noll. This information would assist the plaintiffs to know and understand the rules, regulations,

and procedures by which this agency asserts its limited territorial jurisdiction confined by Title 4 USC section 72. Title 26 USC section 7621 provides internal revenue districts only for purposes of convenience to administer the internal revenue laws consistent with Title 4 USC section 72 and article 1, section 8 of the U.S. Constitution. See Penn Mutual Indemnity Co. v. Comm., 32 T.C. (1959), CCH at page 659. It has been well settled that the requestor must determine whether the agency's employee is acting within the bounds of their authority which is not just limited to an agreement. Bornstein et al. v. U.S., 61-1 USTC para. 9421 (1965), 1965 Standard Federal Tax Reports. Also see Federal Corp Insurance v. Merrill, 332 U.S. 380 (1947)°° "...He who deals with an agent of the government must look to his authority, which will not be presumed but must be established. He cannot rely upon the scope of dealing or apparent authority as in the case of a private agent."

See exhibit 1.

- B.) The plaintiffs, Clifford L. Noll and Susan J. Noll sought specific information under Title 5 USC, Section 552, (Freedom of Information Act) to discover all records which supports the claims of the Dept. of the Treasury- Internal Revenue Service for money demanded and liens filed.
- (1.) Internal Revenue Service assessed a 1040 "kind of tax". (See see exhibit "A", as shown on the face of the subject notice.) Congress has not authorized the assessment or collection of a 1040 "Kind of Tax", however they did authorize the assessment and collection of Income, Estate & Gift, Corporation, Self-employment, Social Security, and Unemployment Taxes. See Title 26 U.S.C.

(2.) The Subject of the lien is legally unenforcable where the Secretary has not provided the content of the subject "form" as required by I.R.C. Sec. (323(f)(3) which provides in the pertinent part...(3). Form- the form and content of the notice referred to in subsection (a) shall be prescribed by the Secretary. The Secretary shall prescribe the form and content of the notice of Federal Tax Lien through promulgation of Treasury Regulations. (See I.R.C. Sec. 7805(a).

See exhibit 2.

C.) JAY HAMMER, Disclosure Officer for the Internal Revenue Service-Dept. of the Treasury stated that he had located the documents requested by the plaintiffs under the Freedom of Information Act and a payment of \$119.00 was required to cover the costs of duplication.

See exhibit 3.

D.) The Dept. of the Treasury-Internal Revenue Service received and cashed the plaintiffs money order.

See exhibit 4.

E.) The plaintiffs, Clifford L. Noll and Susan J. Noll, not having received the information sought, filed a Freedom of Information Act Appeal, still seeking the information.

See exhibit 5.

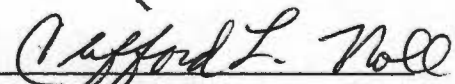
F.) GERALD R. RYAN, Special Assistant to the Assistant Chief Counsel (Disclosure Litigation) Dept. of the Treasury-Internal Revenue Service, refused to supply the information sought stating that the plaintiffs had exhausted all administrative remedies and this matter

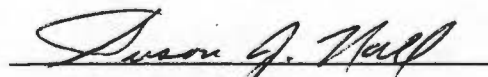
would be more appropriately addressed in a judicial proceeding.

See exhibit 6 and 7.

2. BETTY YOUNG, Revenue Officer for the Internal Revenue Service-Dept. of the Treasury, did not have lawful authority to place liens on properties owned by the plaintiffs. See Title 26 USC, section 6203, and 26 CFR 301.6203-1, which requires a "hand made" delegation of authority.
3. The relief sought by plaintiffs, Clifford L. Noll and Susan J. Noll, is;
 - a) to have this court order the Dept. of the Treasury-Internal Revenue Service to relinquish all claims and/or liens involved in this matter.
 - b) to have this court order the Dept. of the Treasury-Internal Revenue Service to immediately return \$119.00 which they required for duplication of records, and after cashing the money order, refused to send the information paid for.

Dated this 10 day of July, 1992


Clifford L. Noll


Susan J. Noll

AFFIDAVIT

The undersigned, Clifford L. Noll, and Susan J, Noll, declare that the foregoing facts in the complaint are true and correct to the best of our knowledge.

Clifford L. Noll

Clifford L. Noll

Susan J. Noll

Susan J. Noll

Dated this 8th of July, 1992

Laura L. Garrison

Notary Public

SS POSTAGE
L SERVICES (see front)
right of return address
vice window or hand it to
to the right of the return
article.
our name and address on a
ble by means of the gummed
se front of each RETURN
dized agent of the addressee.
on the front of this receipt. It
of Form 3811.
* U.S.G.P.O. 1990-270-163

PS Form 3800, June 1990 (Reverse)

Clifford Noll & Susan Noll
715 N. 13th St.
Coeur D'Alene, Id. 83814
SS # 9997 & 8660

October 22, 1991

Internal Revenue Service
550 W. Fort St.
Boise, Id. 83724

Internal Revenue Service
1650 Mission St.
San Francisco, Ca. 94103

DEMAND FOR JURISDICTION/AUTHORITY, INFORMATION FROM INTERNAL REVENUE SERVICE, AND NOTICE OF CHALLENGE OF SAME.

Please take notice that we hereby demand that the INTERNAL REVENUE SERVICE hereby advise us immediately as to each and every claim of jurisdictional authority the INTERNAL REVENUE SERVICE (hereafter called the IRS) enjoys and/or otherwise claims to have which provides jurisdiction and/or authority over us. This is to also include, but not limited to, Constitutional, Statutory, Contract and/or Merchant Law(s).

Said information is necessary to enable us to adequately prepare a meaningful and affirmative defence to the charges, allegations, and/or penalties imposed thus protecting our right to Due Process and Equal Protection.

Should the IRS claim contract law/jurisdiction, we do hereby demand to know what contract (including, but not limited to, title, date, witness(es) thereto, and all parties thereto) we have knowingly and willfully entered into to provide any such alleged jurisdiction.

EXHIBIT 06 1.

Further, PLEASE TAKE NOTICE that we do hereby challenge your jurisdiction and/or authority in this matter, and do further rescind any and all signatures we have placed upon any and all document(s) which are in effect with your agency.

Respectfully,

Grifford Noll
Susan Noll

Memorandum of Points of Law

It is a principle of law that, once challenged, the person asserting jurisdiction-- MUST PROVE THAT JURISDICTION TO EXIST AS A MATTER OF LAW.

See:

GRIFFIN v. MATTHEWS, 310 F. Supp. 341, 423, F. 2nd 272

McNUTT v. G.M., 56 S.Ct. 789, 80 L. Ed. 1135

BASSO v. U.P.L., 495 F.2d 906

THOMSON v. GASKIEL, 62 S.Ct. 673, 83 L.Ed. 111

PROOF OF SERVICE

I do hereby certify that I have served a true copy of this document on the Internal Revenue Service and/or its District Director by certified mail with Return Receipt Requested. Said service effected at Coeur d'Alene, Id. 83814.

Date _____

Signed

COUR. RECORDING DATA

INTERNAL REVENUE SERVICE
FEDERAL TAX LIEN FACSIMILE DOCUMENT

Lien Recorded : 07/24/89 - 02:39am
Recording Number : 338226

NOTICE of FEDERAL TAX LIEN

District: Boise, ID

IRS Serial Number: 828902485

This Lien Has Been Filed in Accordance with
Internal Revenue Regulation 301.6323(f)-1.

Name of Taxpayer :
CLIFFORD L NOLL

Residence :
PO BOX 198
PINEHURST, ID 83850

With respect to each assessment below, unless notice of lien
is refiled by the date in column(e), this notice shall constitute
the certificate of release of lien as defined in IRC 6325(a).

Form (a)	Period (b)	ID Number (c)	Assessed (d)	Refile Deadline (e)	Unpaid Balance (f)
1040	12/31/76	203-36-9997	11/10/88	12/10/94	18002.05
1040	12/31/77	203-36-9997	11/10/88	12/10/94	8974.83
1040	12/31/78	203-36-9997	11/10/88	12/10/94	16764.91
1040	12/31/79	203-36-9997	11/10/88	12/10/94	24417.59
1040	12/31/80	203-36-9997	11/10/88	12/10/94	5102.41
1040	12/31/81	203-36-9997	11/10/88	12/10/94	11588.14
1040	12/31/82	203-36-9997	11/10/88	12/10/94	11256.05
1040	12/31/83	203-36-9997	11/10/88	12/10/94	10833.63
1040	12/31/84	203-36-9997	11/10/88	12/10/94	18977.12

Filed at: COUNTY RECORDER
SHOSHONE
Wallace, ID 83873

Total \$ 125915.80

This notice was prepared and executed at Boise, ID
on this, the 17th day of July, 1989.

Authorizing Official:
BETTY YOUNG (208)334-1331

Title:
Revenue Officer

EXHIBIT 2

COURT RECORDING DATA

INTERNAL REVENUE SERVICE
FEDERAL TAX LIEN FACSIMILE DOCUMENT

Lien Recorded : 07/24/89 - 02:39am
Recording Number : 338227

NOTICE of FEDERAL TAX LIEN

District: Boise, ID

IRS Serial Number: 828902487

This Lien Has Been Filed in Accordance with
Internal Revenue Regulation 301.6323(f)-1.

Name of Taxpayer :
SUSAN V NOLL

Residence :
PO BOX 198
PINEHURST, ID 83850

With respect to each assessment below, unless notice of lien
is refiled by the date in column(e), this notice shall constitute
the certificate of release of lien as defined in IRC 6325(a).

Form (a)	Period (b)	ID Number (c)	Assessed (d)	Refile Deadline (e)	Unpaid Balance (f)
1040	12/31/76	160-42-8660*	11/10/88	12/10/94	13295.36
1040	12/31/77	160-42-8660*	11/10/88	12/10/94	4307.63
1040	12/31/78	160-42-8660*	11/10/88	12/10/94	11514.12
1040	12/31/79	160-42-8660*	11/10/88	12/10/94	17915.77
1040	12/31/80	160-42-8660*	11/10/88	12/10/94	1513.75
1040	12/31/81	160-42-8660*	11/10/88	12/10/94	2427.13
1040	12/31/82	160-42-8660*	11/10/88	12/10/94	2722.81
1040	12/31/83	160-42-8660*	11/10/88	12/10/94	2740.44
1040	12/31/84	160-42-8660*	11/10/88	12/10/94	5144.80

Filed at: COUNTY RECORDER
SHOSHONE
Wallace, ID 83873

Total \$ 61581.81

This notice was prepared and executed at Boise, ID
on this, the 17th day of July, 1989.

Authorizing Official:
BETTY YOUNG (208)334-1331

Title:
Revenue Officer

EXHIBIT 3

801-629-1754 NOT TOLL FREE

M/S 7000

December 3, 1991

Clifford L. Noll
715 W. 13th St.
Coeur d'Alene, ID 83814

Received Dec 6

Dear Mr. Noll

This is in response to your Freedom of Information Act request dated November 1, 1991 and received in our office November 19, 1991.

We have completed the processing of your request and determined search fees to be \$119.00. To receive the documents located a check or money order, made payable to the Internal Revenue Service, must be received in this office within 30 days. The fees are for reimbursement for services performed and are not refundable.

Please return a copy of this letter along with your payment. A self addressed envelope is included for your use. When your payment is received, we will send you the documents responsive to your request.

put in the envelope supplied.
Sincerely,

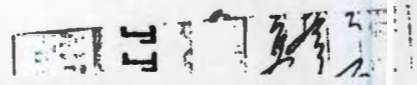
Jay Hammer
Disclosure Officer

Enclosure

*Enclosed is a money order for 119.00
Sent Dec 9, 1991*

*Thank you
Cliff Noll*

R



000000800 20

44338326107

000000031 00

911209 911209

838140

139-00

PAY TO THE ORDER OF *Clifford Hall*
715 N. 13th St
Council Bluffs, IA
 \$ *100.00*
 MONEY ORDER

000000800 20

44471115551

00000011000

MAXIMUM VALUE 2
 This money order is payable to the order of the payee named hereon. It is subject to the terms and conditions of the issuing institution. It is not redeemable for cash at the place of issue. It is not valid if the words "CASH" or "PAY TO THE ORDER OF" are crossed out. It is not valid if the words "MONEY ORDER" are crossed out. It is not valid if the words "PAY TO THE ORDER OF" are crossed out. It is not valid if the words "MONEY ORDER" are crossed out.

National Commission, Ltd.
 1000 North St. St. Louis
 Missouri 63102
 Deposit Order # 2221

NATIONAL COMMISSION, LTD.
 1000 NORTH ST.
 ST. LOUIS, MISSOURI 63102
 DEPOSIT ORDER # 2221

23 92

00876810

08160045

DD * P.L.C.

8-0000-0111
 00000000000000000000
 P.L.C.

EXHIBIT 4

January 23, 1992

Clifford L. Noll
715 N. 13th St.
Coeur d'Alene, Id. 83814
SS # 9997

Freedom of Information Appeal
Commissioner of Internal Revenue
Ben Franklin Station
P.O. Box 829
Washington D.C. 20044

Dear Sirs,

This letter is in reference to a letter (copy enclosed) from your office dated December 17, 1991 in which your agent, Gerald R. Ryan, inferred that I would receive the information I have sought through the Freedom of Information Act sometime around the first week of January 1992. Since the information has not arrived and your letter states that the statutory period for your response to my appeal ended January 2, 1992, be advised that **THIS LETTER IS A FORMAL DEMAND** to remove all liens placed my person and or property for the following reasons;

1. The agency, Internal Revenue Service (IRS), has failed to respond to my written challenge for jurisdiction as provided in Title 5 U.S.C., section 556 (d), as follows:
" When jurisdiction is challenged the burdan of proof is on the government."

EXHIBIT 5

2. The agency (IRS) has failed to respond timely to Freedom of Information Act requests.
3. The agency (IRS) has failed to respond timely to a properly submitted Freedom of Information Act Appeal.
4. The uncollected taxes claimed for the years 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, and 1984 are beyond the statute of limitation and are therefore uncollectable.

If all liens filed against me and/ or my property by this agency are not permanently removed within thirty (30) days from your receipt of this letter, I will file a Title 5 action in Federal District Court to resolve this matter.

Sincerely,

Clifford L. Noll



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

CC:D:7155-92
BrT:Johnson

26 MAR 1992

Mr. Clifford L. Noll
715 N. 13th St.
Coeur d'Alene, ID 83814

Dear Mr. Noll:

This is in response to your letter, dated November 29, 1991, in which you sought an administrative appeal under the Freedom of Information Act (FOIA) concerning your October 22, 1991, request to the IRS in Boise, ID and San Francisco, CA.

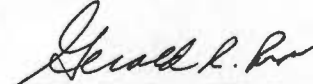
The FOIA does not require agencies to respond to interrogatories. It also does not require agencies to conduct research to determine which resolution, decision, or statute you are seeking. Neither does the Act require an agency to respond to statements which appear to be more appropriately addressed in a judicial proceeding.

One of the FOIA's requirements is that requesters sufficiently identify the records solicited in order to locate them. To the extent you are seeking records which establish the authority of the Internal Revenue Service to assess, enforce, and collect taxes, please be advised of the following. The Sixteenth Amendment to the Constitution authorized Congress to impose an income tax. Congress did so in the Internal Revenue Code, which may be found at Title 26 of the United States Code. The IRS administers the Internal Revenue Code. The Code contains information that may be responsive to your request. While the Code is available at many bookstores and public libraries throughout the country, it is also available to you upon written request to the district disclosure office that satisfies the procedural requirements set forth in 26 C.F.R. §601.702. The cost for duplicating the entire Code is approximately \$500. If you are not interested in obtaining the entire Code, you may submit a request that identifies the specific sections, by number, that you desire. Or you may submit a written request that seeks to inspect the Code at your local district office. After inspecting the Code, you may identify the sections you wish copied and, upon remittance of the appropriate copying fees, if any, receive them. Alternatively, copies of the Internal Revenue Code may be purchased in bookstores or read in public libraries.

EXHIBIT 6

Finally, income tax filing requirements are supported by statute, and implementing regulations, which may be challenged through the judicial system, but not the FOIA. There has been no denial of agency records to consider on appeal. Accordingly, we are closing our file in this matter.

Sincerely,



GERALD R. RYAN
Special Assistant
(Disclosure Litigation)

EXHIBIT 7 15



Certified to be a true and correct copy of original filed in my office.

Elizabeth A. Smith, Clerk
U.S. Courts, District of Idaho

By Sunny Trumbull
on Jul 23, 2015 3:55 pm

IN THE UNITED STATES DISTRICT COURT **FILED**
FOR THE DISTRICT OF IDAHO **U.S. DISTRICT COURT**

1993 FEB 23 P 4:41

CLIFFORD L. NOLL and SUSAN J. NOLL,)
husband and wife,)

Plaintiffs,)

v.)

UNITED STATES OF AMERICA,)

Defendant.)

DISTRICT OF IDAHO
CAMERON S. BURKE *hcy*

CIVIL NO. 92-0282-S-HLR

ORDER ON PENDING MOTIONS
AND DISMISSING ACTION

I. FACTS & PROCEDURE

On July 21, 1992, the above-entitled action was filed and assigned to the Honorable Edward J. Lodge. Thereafter, several motions were filed and a hearing on pending motions was ultimately scheduled for February 26, 1993. On February 19, 1993, pursuant to an Order of Reassignment, this case was reassigned to this court because it involves plaintiffs situated in northern Idaho. Accordingly, the hearing previously set before Judge Lodge was vacated.

Upon receipt of this action, this court undertook a thorough review of the record herein. During the course of such review, the court came upon a handwritten letter dated February 5, 1993, from Plaintiff Clifford Noll. The letter essentially notes a concern that the prior hearing date of February 26, 1993, would take place *after* a marshal's sale scheduled for February 24, 1993.

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Mindful of these time frames, this court carefully considered the allegations contained in the Complaint, together with the arguments contained in the United States' Motion to Dismiss filed on October 14, 1992; plaintiffs' Motion for Judgement [sic] filed on September 30, 1992; and plaintiffs' motion to amend filed on February 8, 1993.

Plaintiffs' Complaint basically seeks an order requiring the Internal Revenue Service (IRS) to relinquish all claims and liens involving the plaintiffs and to refund \$119.00 which plaintiffs paid for the duplication of records that they allegedly never received.

Because the court finds that a hearing in this case would not aid the decision making process, one shall not be scheduled. Instead, based on the record, this court finds that the motion to dismiss shall be granted for lack of subject matter jurisdiction. The court finds further that plaintiffs' motion for judgment and motion to amend should be summarily denied.

II. ANALYSIS

A. The Proper Party Defendant

Plaintiffs named three IRS agents as defendants in this case. The Ninth Circuit Court of Appeals has held that "a suit against IRS employees in their official capacity is essentially a suit against the United States." Gilbert v. DaGrossa, 756 F.2d 1455, 1458 (9th Cir. 1985). Accordingly, finding that the United States is the only proper party defendant in this case, the

action against Betty Young, Jay Hammer and Gerald R. Ryan shall be dismissed, and the United States shall be substituted as the named defendant.

B. The Government's Motion to Dismiss

On behalf of the defendants named by plaintiffs, the United States filed a motion to dismiss this action pursuant to Rule 12(b)(1), -(5) and -(6) of the Federal Rules of Civil Procedure. This court finds the application of Rule 12(b)(1) to be largely dispositive in this case.¹ Therefore, the focus of the following analysis will be on the lack of subject matter jurisdiction.

Beyond plaintiffs' desire to obtain a refund of moneys paid to the IRS under the Freedom of Information Act,² the thrust of plaintiffs' Complaint challenges the efforts of various employees of the IRS and seeks to obtain relief from collection activities of the IRS.

¹ Technically, because plaintiffs never filed a brief in opposition to the government's motion, the government's motion should be summarily granted pursuant to Local Rule 7.1(d). However, because the plaintiffs are proceeding pro se, and because this court prefers to decide matters based on their merits, the court will proceed with an analysis of the applicable statutes.

² Although plaintiffs have clearly failed to establish a jurisdictional basis for pursuing their claim for a refund of \$119.00 paid under the Freedom of Information Act, even if jurisdiction were not lacking, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, this court finds that dismissal of this claim would be appropriate because plaintiffs have failed to state a claim upon which relief can be granted.

The Anti-Injunction Act prohibits a taxpayer from bringing a "suit for the purpose of restraining the assessment or collection of any tax" 26 U.S.C. § 7421(a). The Act is enforced strictly. See Maxfield v. United States Postal Serv., 752 F.2d 433, 434 (9th Cir. 1984). A district court must dismiss for lack of subject matter jurisdiction any suit falling within the Act's proscription. Elias v. Connett, 908 F.2d 521, 523 (9th Cir. 1990). Thus, ordinarily, once a tax has been assessed, the taxpayer's only recourse is to appeal to the tax court or to pay the tax in full and then sue for a refund in district court. See United States v. Condo, 782 F.2d 1502, 1506 (9th Cir. 1986). Aside from statutory exceptions that are inapplicable here, one judicial exception to the Act does exist. Elias v. Connett, 908 F.2d at 523. For that exception to apply, however, the taxpayer must demonstrate that (1) under no circumstances could the government ultimately prevail on the merits; and (2) the taxpayer will suffer irreparable injury without injunctive relief. *Id.* at 525 (emphasis added).

Where, as here, plaintiffs' action attempts to impede the collection activities of the IRS and does not begin to meet the burden of demonstrating that the government would not ultimately prevail on the merits, or that they would suffer irreparable injury without injunctive relief, the action is barred by the Anti-Injunction Act. *Id.* at 526. Nor can plaintiffs establish

that this court has jurisdiction under the Declaratory Judgment Act, 28 U.S.C. § 2201, or the Administrative Procedure Act, 5 U.S.C. § 702. See Hughes v. United States, 953 F.2d 531, 536-37 (9th Cir. 1992). Therefore, this action shall be dismissed for lack of subject matter jurisdiction.

C. Plaintiffs' Motions

1. Motion for judgment.

Plaintiffs filed a Motion for Judgement [sic] on September 30, 1992. Mindful of the applicable rules and given the allegations contained in the Complaint, this court finds that such motion should be summarily denied. In addition to noting the arguments raised by the government regarding whether or not service was properly effected in this case, this court finds that plaintiffs have simply not established that they are entitled to the relief requested in their Complaint. Therefore, pursuant to Rule 55(e) of the Federal Rules of Civil Procedure, this court is precluded from entering judgment against the United States.

2. Proposed amendments to Complaint.

On October 26, 1993, plaintiffs filed a document entitled Amendment to Pleading. Later, on February 8, 1993, plaintiffs filed a document entitled Amended & Supplemental [sic] Pleadings³ with an Amendment to Complaint attached thereto. Plaintiffs seek to add additional prayers for relief to their

³ The court shall construe this document as a motion to amend.

Complaint including, *inter alia*, requests that this court delay the United States Marshal's sale scheduled from February 24, 1993; order all proceeds from the property to be held in escrow until this matter is settled; order the agency to amend all of plaintiffs' records to show the amount owed to be zero for all years involved; order that the agency return all money collected; and order that the agency pay damages and issue an apology to plaintiffs.

As discussed above, this court clearly lacks jurisdiction to entertain this action. The amended complaint proposed by plaintiffs actually enhances, rather than cures, such jurisdictional defects. Therefore, since no purpose is served by allowing plaintiffs to amend their Complaint, the motion to amend shall be denied.

III. ORDER

Based on the foregoing and the court being fully advised in the premises,

IT IS HEREBY ORDERED that, as reflected in the caption of this order, Defendants Betty Young, Jay Hammer and Gerald R. Ryan are hereby DISMISSED, and the United States of America is substituted as the named defendant. All further documents filed by the parties herein shall reflect the same.

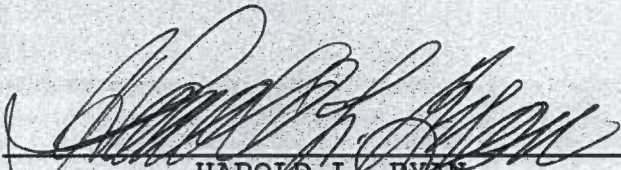
IT IS FURTHER ORDERED that the United States' Motion to Dismiss should be, and is hereby, GRANTED; and this action should

be, and is hereby DISMISSED for lack of subject matter jurisdiction.

IT IS FURTHER ORDERED that plaintiffs' Motion for Judgement [sic] should be, and is hereby, DENIED.

IT IS FURTHER ORDERED that plaintiffs' motion to amend filed February 8, 1993, should be, and is hereby, DENIED.

DATED this 23 day of February, 1993.



HAROLD L. RYAN
SENIOR UNITED STATES DISTRICT JUDGE

CLERK'S CERTIFICATE OF MAILING

I hereby certify that a copy of the attached document was mailed to the following named persons:

US Atty

Clifford Hall

715 N 13

Colo FD 89814

4 Judgment

Dated: 2-24-93

CAMERON S. BURKE, CLERK

by *CB*
Deputy Clerk