

# **EXHIBIT 3**

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18 **UNITED STATES DISTRICT COURT**  
19 **DISTRICT OF ARIZONA**

20 IN DEFENSE OF ANIMALS, a non-profit  
21 organization; the ANIMAL WELFARE  
22 INSTITUTE, a non-profit organization; and  
23 the INTERNATIONAL SOCIETY FOR THE  
24 PROTECTION OF MUSTANGS and  
25 BURROS, a non-profit organization;  
26 PATRICIA HAIGHT, an individual;  
27 RICHARD POTTS, an individual,

28 Plaintiffs,

vs.

UNITED STATES GOVERNMENT,  
DEPARTMENT OF AGRICULTURE, MIKE  
JOHANNNS, as acting UNITED STATES  
SECRETARY OF AGRICULTURE;  
UNITED STATES FOREST SERVICE;  
ELAINE J. ZIEROTH, as the acting UNITED  
STATES FOREST SUPERVISOR,

Case No. CV-05-2754- PHX -FJM

**STIPULATION AND JOINT  
MOTION FOR ENTRY OF ORDER  
ADOPTING STIPULATION AND  
DISMISSING CLAIMS**

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2  
3 Plaintiffs In Defense of Animals, a non-profit organization, the Animal Welfare  
4 Institute, a non-profit organization, the International Society for the Protection of  
5 Mustangs and Burros, a non-profit organization, Dr. Patricia Haight, and Richard Potts  
6 (collectively "Plaintiffs"), and Defendant United States Government, Department of  
7 Agriculture, Mike Johanns as United States Secretary of Agriculture, United States Forest  
8 Service, Elaine J. Zieroth, as the United States Forest Supervisor (collectively "Forest  
9 Service")<sup>1</sup> hereby STIPULATE and JOINTLY MOVE for entry of an order dismissing  
10 the above-captioned action without prejudice on the terms and conditions set forth in this  
11 Stipulation.

12 Plaintiffs commenced Civil Action 05-2754 PHX-FJM against the Forest Service,  
13 on September 9, 2005, alleging violations of the Wild Free Roaming Horses and Burros  
14 Act of 1971, 16 U.S.C. Section 1331, *et seq.* (the "Act"); the National Environmental  
15 Policy Act, 42 U.S.C. § 4321 *et seq.* ("NEPA"); and the Administrative Procedure Act, 5  
16 U.S.C. § 701, *et seq.* ("APA"), in connection with the issuance of a Solicitation for Bid  
17 for the capture, relocation, and eventual sale of approximately 120 trespass horses, from  
18 an unknown number of horses residing on public lands.

19 IT IS STIPULATED by and between the parties as follows:

20 1. The Parties agree that settlement of the Civil Action on the conditions  
21 stated below is in the public interest and is an appropriate way to resolve the present  
22 dispute between them.

23 2. The undersigned representatives of Plaintiffs and the Forest Service certify  
24 that they are fully authorized by the party or parties whom they represent to enter into this  
25 Stipulation and legally bind the Parties to the terms and conditions contained herein.

26  
27  
28 <sup>1</sup> Mike Johanns is substituted for Ann M. Veneman pursuant to Rule 25(d), Fed. R. Civ. P.

1           3.     The Parties hereby agree that the Heber Wild Horse Territory still exists  
2 and has not been dissolved.

3           4.     The Parties hereby agree that wild horses are by law an integral part and  
4 component of the natural system of the public lands, as expressed by Congress in the  
5 Wild Free-Roaming Horses and Burros Act of 1971 as amended. The Forest Service will  
6 work with the public, including Plaintiffs, in the development of a written Heber Wild  
7 Horse Territory Management Strategy in accordance with the provisions of the Act.

8           5.     The Forest Service agrees to refrain from any gathering or removing of  
9 horses within the Heber Wild Horse Territory, as well as, on the Black Mesa and  
10 Lakeside Ranger Districts (which are considered the Sitgreaves National Forest) until the  
11 Forest Service completes, with public involvement, an analysis and appropriate  
12 environmental document pursuant to NEPA and develops a written Heber Wild Horse  
13 Territory Management Strategy. The Forest Service will involve the public, including the  
14 Plaintiffs, in scoping for this analysis. The Forest Service will provide Plaintiffs with  
15 specific notice of the document and consider Plaintiffs' comments on the same, however,  
16 Plaintiffs' comments are not entitled to any different weight or consideration than any  
17 other member of the public.

18           6.     The Forest Service will continue to coordinate with the White Mountain  
19 Apache Tribe for repair and maintenance of the boundary fence.

20           7.     Plaintiffs reserve the right to object to any provision, term, or condition  
21 contained in the Management Strategy and/or the results of any study, assessment, or  
22 evaluation used to support the Management Strategy. Nothing in this Stipulation shall  
23 bar Plaintiffs from filing a new civil action in the future should there be a dispute  
24 involving this Stipulation, the NEPA process or final NEPA document, and/or the  
25 Management Strategy.

26           8.     Upon approval of this Stipulation and granting of this Joint Motion by the  
27 Court, all counts of Plaintiffs' Complaint in Civil Action 05-2754 PHX-FJM shall be  
28 dismissed without prejudice and parties will agree to vacate the injunction.

1           9.     Upon dismissal of this civil action, the Forest Service will pay the Plaintiffs  
2 a total of \$3,000.00 in full and complete satisfaction of any and all claims for attorneys'  
3 fees and costs of litigation by Plaintiffs for pursuing Civil Action 05-2754 PHX-FJM.

4           10.    Plaintiffs agree that receipt of this payment from the Forest Service shall  
5 operate as a release of any and all claims for attorneys' fees and costs that Plaintiffs may  
6 seek to pursue in Civil Action 05-2754-PHX-FJM.

7           11.    The Parties agree and understand that the Forest Service's obligations under  
8 this Stipulated Settlement Agreement, with exception of those listed in Paragraph 10, are  
9 contingent upon the availability of appropriate funds, and that nothing in this Agreement  
10 shall be construed as a commitment or requirement that the Forest Service obligate or pay  
11 funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other applicable  
12 law.

13           12.    Nothing in this Stipulation and Joint Motion constitutes an admission by  
14 any Party to any fact, claim, or defense at issue in this lawsuit.

15                     DATED: this 13th day of March, 2007.

16   s/ Paul K. Charlton  
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   United States Attorney

18   s/ Richard Patrick  
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