No. 05-893

In the Supreme Court of the United States

STAR-GLO ASSOCIATES, L.P., ET AL.,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

PAUL D. CLEMENT
Solicitor General
Counsel of Record
PETER D. KEISLER
Assistant Attorney General
DAVID M. COHEN
MARK A. MELNICK
MICHAEL N. O'CONNELL
Attorneys
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

RICK D. HERNDON
CARLYNNE S. COCKRUM
Attorneys
Department of Agriculture
Regulatory Division
Office of the General Counsel
Washington, D.C. 20250-1400

QUESTION PRESENTED

Whether the court of appeals correctly held that a statute compensating citrus growers for destroyed trees on a per-acre basis refers only to acreage actually planted with trees.

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OPINIONS BELOW

The decision of the court of appeals (Pet. App. 1a-19a) is reported at 414 F.3d 1349. The decision of the Court of Federal Claims (Pet. App. 20a-45a) is reported at 59 Fed. Cl. 724.

JURISDICTION

The judgment of the court of appeals was entered on July 13, 2005. A petition for rehearing was denied on October 12, 2005 (Pet. App. 46a-47a). The petition for a writ of certiorari was filed on January 10, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Florida Department of Agriculture and Consumer Services (FDACS) has sought to eliminate citrus canker, "a plant disease that results in unmarketable fruit," by identifying and removing infected trees in the State. Pet. App. 2a. Congress has appropriated funds to compensate commercial citrus growers whose trees are destroyed under this program. *Id.* at 2a-3a; see Consolidated Appropriations Act for FY 2000, Pub. L. No. 106-113, App. E, Tit. II, § 204, 113 Stat., 1501A-293; Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, Tit. II, § 203(e)(1)(c), 114 Stat. 400; Act of Oct. 28, 2000, Pub. L. No. 106-387, App.—H.R. 5426, Tit. VII, § 810, 114 Stat. 1549A-52.

2. On October 16, 2000, after the second of those appropriations, the United States Department of Agriculture (USDA) published an interim rule governing the calculation of payments under those appropriations. Citrus Canker; Payments for Commercial Citrus Tree Replacement, 65 Fed. Reg. 61,077. That rule provided for USDA to make tree replacement payments of $26 per removed tree. See *id.* at 61,078. Those payments, however, were subject to per-acre caps, which varied depending upon the type of tree. *Ibid.* The reason for the caps, USDA explained, was that "output per acre is approximately the same, regardless of the number of trees per acre." *Ibid.*

USDA calculated the per-acre caps "by multiplying $26 by the varietal average number of trees per acre," as reported to USDA by the Florida Agriculture Statistics Service (FASS), based on data the latter produced in collaboration with the Florida citrus industry. 65 Fed. Reg. at 61,078; Pet. App. 3a. For each variety of citrus,

the FASS report included information on acreage and the total number of trees. *Ibid.* Those acreage figures reflected "land which is actually planted with citrus trees" and excluded "bayheads, ponds, sinkholes, drainage canals, lateral and swale ditches, roads, turn rows, and wide middles." *Id.* at 4a (quoting FASS, *Commercial Citrus Inventory 2000*, at vi (Dec. 2000) <http://www.nass.usda.gov/Statistics_by_State/Florida/Publications/Citrus/cci/2000/cci00p.pdf> (FASS Report)).

The interim rule required claimants to supply USDA with a copy of the FDACS order requiring the destruction of the trees in question. Pet App. 4a; 65 Fed. Reg. at 61,078. Those orders "listed the number of trees destroyed and the number of 'acres' affected." Pet. App. 4a.

3. Twelve days after USDA issued the interim tree replacement rule, on October 28, 2000, Congress enacted the appropriations statute centrally at issue in this case. Pub. L. No. 106-387, 114 Stat. 1549. Section 810 of the statute appropriated $58,000,000 to the Secretary of Agriculture to provide assistance to commercial growers whose trees were removed to control citrus canker. See 114 Stat. 1549A-52.[1] Like the interim rule, Section 810

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[1] The statute provided, in relevant part, as follows:

Sec. 810. (a) The Secretary of Agriculture shall pay Florida commercial citrus and lime growers $26 for each commercial citrus or lime tree removed to control citrus canker in order to allow for tree replacement and associated business costs. Payments under this subsection shall be capped in accordance with the following trees per acre limitations:

(1) in the case of grapefruit, 104 trees per acre;
(2) in the case of valencias, 123 trees per acre;
(3) in the case of navels, 118 trees per acre;
(4) in the case of tangelos, 114 trees per acre;
(5) in the case of limes, 154 trees per acre; and

provided for payments of "$26 for each commercial citrus or lime tree removed to control citrus canker in order to allow for tree replacement and associated business costs." It further incorporated exactly the same per-acre caps as the interim rule. See § 810(a)(1)-(6), 114 Stat. 1549A-52.

In addition to tree placement payments, the statute directed that growers be compensated for lost production. See § 810(b), 114 Stat. 1549A-52. Approximately six weeks later, USDA issued a proposed rule for lost production payments. Citrus Canker; Payments for Recovery of Lost Production Income, 65 Fed. Reg. 76,582 (2000). Echoing the rationale for the per-acre caps on tree replacement payments, USDA explained that, based upon the recommendations of "extension economists and sources within the citrus industry," it would make payments for the recovery of lost production income on a per-acre basis, rather than on a per-tree basis, because output per acre is approximately the same regardless of the number of trees per acre. *Id.* at 76,585. USDA found that paying on a per-tree basis would likely result in undercompensation of growers with older groves (which normally have fewer but more

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(6) in the case of other or mixed citrus, 104 trees per acre.

(b) The Secretary of Agriculture shall compensate Florida commercial citrus and lime growers for lost production, as determined by the Secretary of Agriculture, with respect to trees removed to control citrus canker.

* * * * *

(e) The Secretary of Agriculture shall use $58,000,000 of the funds of the Commodity Credit Corporation to carry out this section, to remain available until expended.

* * * * *

§ 810, 114 Stat. 1549A-52 to 1549A-53.

productive trees) and overcompensation of growers with newer groves (which normally have more, but less productive, trees). See *ibid.*

USDA published the final rule on lost production compensation on June 18, 2001. Citrus Canker; Payments for Recovery of Lost Production Income, 66 Fed. Reg. 32,713 (codified at 7 C.F.R. 301.75-16). It published the final rule on tree replacement compensation on August 17, 2001. Citrus Canker; Payments for Commercial Citrus Tree Replacement, 66 Fed. Reg. 43,065 (codified at 7 C.F.R. 301.75-15). The regulations for lost production payments required each claimant to submit "a copy of the public order directing the destruction of the trees and its accompanying inventory that describes the acreage, number, and the variety of trees removed." 66 Fed. Reg. at 32,717. Similarly, the regulations for tree replacement payments required each claimant to submit "a copy of the public order directing the destruction of the trees and its accompanying inventory that describes the number and the variety of trees removed." *Id.* at 43,066.

4. From June 2000 through March 2001, FDACS issued a series of public orders to destroy citrus trees owned by petitioners Star-Glo Associates, L.P. (Star-Glo) and Ruby Red Equities, L.P. (Ruby Red). Pet. App. 6a, 22a. The orders listed the number of trees to be destroyed and the number of affected acres—*i.e.*, "the acreage actually planted with trees." *Id.* at 6a. FDACS subsequently removed the trees. *Id.* at 22a.

Petitioners applied for tree replacement and lost production payments from USDA. Pet. App. 6a, 22a. Attaching the FDACS public orders to their claims, the two companies based their requests for payment on the acreage calculations specified in those orders. *Id.* at 6a.

Through July 25, 2001, USDA made three payments to Star-Glo totaling $4,160,916.96 and three payments to Ruby Red totaling $2,912,118.36. *Id.* at 6a, 22a.

For both of the petitioners, certain of the public orders resulted in the removal of trees in excess of the per-acre replacement payment limits. For example, a November 2, 2000, order directed the destruction of grapefruit trees owned by Star-Glo reflecting an average of 182 trees per acre, while the statutory cap for grapefruit trees was 104 trees per acre. See Pet. App. 6a; § 810(a)(1), 114 Stat. 1549A-52. Thus, the per-acre caps operated to reduce the tree replacement payments to petitioners.

5. On September 5, 2001, petitioners submitted amended claims for tree replacement and lost production payments. They contended that USDA should have calculated their payments using "grove acreage" figures, rather than the planted acreage figures that appeared in the public orders. Pet. App. 7a. Petitioners defined "grove acreage" to include "not only the acreage of the groves containing the trees destroyed, but also the unplanted acreage used to support the trees destroyed, including land for harvesting, for maintenance machinery, for staging areas, for swales and for water treatment areas." *Id.* at 22a-23a. Petitioners' "grove acreage" was more than 50% greater than the acreage figures that appeared in the public orders and that petitioners used in their initial claims for payment. *Id.* at 7a. Other than petitioners, no citrus growers sought payment on the basis of "grove acreage." *Ibid.*

On October 5, 2001, USDA denied petitioners' amended claims. The agency explained that its "current policy for determining compensation is based on acreage figures that are provided . . . by the State on its . . . de-

struction order documents [that] describe the actual acres of trees that were required to be destroyed." Pet. App. 7a (quoting C.A. App. 67). USDA further explained that it was "difficult to see how we could be expected to pay compensation for areas that were not actually planted in citrus and from which there is no direct loss." *Ibid.* (quoting C.A. App. 67). At that point, USDA had not yet exhausted the $58,000,000 appropriated for tree replacement and lost production payments. *Ibid.*

6. More than a year and a half later, on May 20, 2003, petitioners sued in the Court of Federal Claims. Pet. App. 7a-8a. Maintaining that USDA had calculated their payments using incorrect acreage figures, petitioners sought a total of $1,281,698.86 in additional tree replacement payments and $2,214,181.68 in additional lost production payments. *Id.* at 8a. By now, the USDA had exhausted the $58,000,000 appropriation. *Id.* at 7a.

The court granted summary judgment for the government. Pet. App. 20a-45a. It held that the $58,000,000 appropriation in Section 810(e) had capped the funds available to compensate citrus growers, such that "[o]nce the established funds are used up, no further payments under the program * * * may be made." *Id.* at 41a. The court further held that "[t]he fact that plaintiffs filed their amended claims before the appropriation was fully expended does not give them a vested right to payment." *Id.* at 42a. Because the court determined that the appropriations cap barred further payments in any event, it did not reach the question whether USDA had properly declined to use the "grove acreage" method. See *id.* at 44a.

7. The court of appeals affirmed. Pet. App. 1a-19a. Although it found the text of Section 810 ambiguous as to whether the $58,000,000 figure capped the funds

available, it determined that the conference report on the statute "ma[de] clear" that the statute should be read to impose a cap. *Id.* at 12a. The court noted, however, that "[t]he question remains * * * as to the effect of the cap," because petitioners had filed their amended claims before the available funds were expended. *Ibid.* The court declined to decide that question, because it found it "clear that, in light of the fact that payments were capped under the statute, the statute provides compensation only for acreage on which trees were actually planted." *Id.* at 13a.

Though noting that "[t]he statutory language 'trees per acre' is arguably ambiguous," the court reasoned that "a variety of factors serves to resolve any ambiguity * * *, and makes clear Congress's intent to compensate grove owners on the basis of acreage that was actually planted with trees." Pet. App. 13a-14a; see *id.* at 17a (concluding that "Congress 'has directly spoken'" (quoting *Chevron U.S.A. Inc.* v. *Natural Res. Def. Council*, 467 U.S. 837, 842 (1983))). First, the court held, "industry usage in this context makes clear that the term 'acre' means 'land which is actually planted with trees.'" *Id.* at 14a. Specifically, the FASS report—"the source of industry information"—defined "acreage" to include only planted acreage, and used the term "acre" repeatedly without modification. *Ibid.* Further, the FDACS public orders used that definition in identifying the number of affected acres. *Ibid.* No other growers had sought compensation on a "grove acreage" basis; indeed, petitioners themselves initially filed their claims based on planted acreage. *Ibid.*

Second, apart from industry usage, "section 810 was enacted against a backdrop of Florida's explicit definition of the term 'acre' and the USDA's implementing

regulations and practice concerning this particular compensation program." Pet. App. 15a. When Congress enacted the statute, USDA regulations "had already established rules and norms for such compensation, including limiting compensation to acres actually planted with trees." *Ibid.* "Congress approved the agency's prior efforts," the court observed, "not by mere acquiescence, but by affirmatively enacting legislation that incorporated the precise per acre limits set forth in the original interim rule, thus suggesting approval of the formula that the agency had utilized." *Ibid.*

Third, "[t]he statute's purpose would be undermined" by petitioners' definition of "acres." Pet. App. 16a. "Section 810," the court observed, "was designed to provide compensation to citrus growers for lost trees and lost production income from those trees." *Ibid.* When it provided compensation on a trees-per-acre basis, "Congress plainly contemplated that the acreage involved would have growing trees." *Ibid.* Further, the goal of the per-acre caps was to ensure equitable distribution of compensation among growers of older and younger trees; that goal would be subverted "if the allocation formula were skewed to overcompensate owners of more dense groves (at the expense of other growers), by increasing the per acre cap to include unplanted land." *Id.* at 16a-17a.

ARGUMENT

The court of appeals correctly relied on industry usage to construe the term "trees per acre," and petitioners do not appear to challenge the other stated grounds for the court's construction of that term. The court was also correct in concluding that Section 810 imposed a cap on USDA's total expenditures, and in any event that

determination was, at most, peripheral to the court's holding. The court's decision does not conflict with any decision of this Court or of another court of appeals. Further review therefore is unwarranted.

1. a. Petitioners contend (Pet. 16-17) that Section 810 requires payments on the basis of "grove acreage," not planted acreage. They point, however, to no statutory language that clearly requires that construction. Nor could they: the provision states only that "[p]ayments under this subsection shall be capped in accordance with the following trees per acre limitations." Act of Oct. 28, 2000, app.—H.R. 5426, Tit. VII, § 810(a), 114 Stat. 1549A-52. The statute is silent as to whether "trees per acre" refers to the number of planted acres, or the number of "grove acres." Far from containing a "clear statutory instruction" that "per acre" means "'per acre' of the full commercial citrus grove on which the trees were destroyed," Pet. 17, the statutory language is, as the court of appeals concluded, "facially ambiguous." Pet. App. 13a.

Having correctly concluded that the statutory language does not clearly indicate whether payments should be calculated using planted or total acres, the court of appeals properly looked to other indications of the provision's meaning. See, *e.g.*, *Barnhart* v. *Sigmon Coal Co.*, 534 U.S. 438, 450 (2002) (statutory construction "inquiry ceases *if the statutory language is unambiguous* and the statutory scheme is coherent and consistent" (emphasis added; internal quotation marks and citation omitted)). One such indication is preexisting industry usage. Indeed, this Court has held that "technical terms of art should be interpreted by reference to the trade or industry to which they apply." *Louisiana Pub. Serv. Comm'n* v. *FCC*, 476 U.S. 355, 372 (1986).

Petitioners therefore err in contending that the court of appeals improperly relied on industry usage to contradict clear statutory language. Rather, the court correctly employed industry usage to determine the meaning of a facially ambiguous statutory term.

b. The court of appeals' construction of the term "trees per acre" was correct. As the court noted, and contrary to petitioners' contentions (Pet. 19-20), industry usage belies the claim that "trees per acre" refers to "grove acreage," not planted acreage. The FASS report, on which USDA based its per-acre caps, used "acres" to refer to planted acres.[2] The acreage figures in the FDCAS public orders—which USDA required growers to submit in support of their claims for payment—likewise referred to planted acres. Petitioners themselves did not initially contend that they should be compensated for "grove acreage," and no other citrus grower seems to have interpreted "trees per acre" to refer to "grove acreage."

More fundamentally, petitioners' construction of the statute would result in a complete mismatch between the manner in which the per-acre caps were calculated and the manner in which they are applied. The FASS report made clear that, whatever the terminology, its citrus inventory referred to planted acres. See Pet. App. 14a. USDA based its average-trees-per-acre figures—and, in turn, its per-acre payment caps—on the acreage figures in that report. And when it enacted Section 810(a), Congress incorporated precisely the same per-acre caps as

[2] While the FASS report's definition of "acres" was headed "NET ACRES IN COMMERCIAL GROVES," Pet. 20, the very point of that paragraph was to define the term "acreage." Accordingly, on myriad occasions throughout the report, the terms "acres" and "acreage" are used to refer to land actually planted with trees. See FASS Report.

those announced by USDA just two weeks before. See *id.* at 15a. Because the specific per-acre caps were themselves calculated based on the average productivity of planted acres, it would make no sense to use "grove acreage" figures in applying those caps. Indeed, petitioners do not even appear to challenge the court of appeals' conclusion that, "by affirmatively enacting legislation that incorporated the precise per acre limits set forth in the original interim rule," Congress "suggest[ed] approval of the formula that the agency had utilized." *Ibid.*

Petitioners similarly do not appear to dispute the court of appeals' conclusion that basing payments on "grove acreage" would be inconsistent with the statute's purpose. See Pet. App. 16a-17a. As the court observed, "Section 810 was designed to provide compensation to citrus growers for lost trees and lost production income from those trees." *Id.* at 16a. In view of that purpose, "trees per acre" logically refers to acres with growing trees. Further, basing payments on "grove acreage" would be inconsistent with Congress' concern for equity among growers. As USDA found, and as petitioners have never disputed, an acre of citrus trees produces approximately the same amount of fruit regardless of whether it has fewer (but larger) trees or more (but smaller) trees. See 65 Fed. Reg. at 76,582. The per-acre limits were intended to ensure that growers with more densely planted groves were not overcompensated relative to growers with less densely planted (but equally productive) groves. Because the per-acre limits were calculated based on the average productivity of planted acres, petitioners' "grove acreage" method would inequitably benefit owners of more densely planted

groves—such as petitioners—by effectively allowing them to subvert the productivity-based caps.[3]

2. Petitioners contend that the court of appeals deviated from this Court's precedents in concluding that Section 810 imposed a statutory spending cap. That contention does not merit review, however, because the court of appeals ultimately decided the case on the alternative ground that USDA had correctly interpreted the statute to limit compensation to planted acres. Pet. App. 13a.[4] In any event, the court of appeals correctly concluded that Section 810 capped citrus canker compensation at $58,000,000.

a. As both the Court of Federal Claims and the court of appeals recognized, see Pet. App. 10a, 36a, when an appropriations statute uses language such as "shall be available," that language "presumptively 'fences in' the earmarked sum" as both the minimum and the maxi-

[3] Moreover, while petitioners maintain that USDA deviated from the meaning of the statutory term "trees per acre," the statutory provision governing lost production payments does not even use that term. Rather, it states that USDA "shall compensate Florida commercial citrus and lime growers for lost production, as determined by the Secretary of Agriculture, with respect to trees removed to control citrus canker." § 810(b), 114 Stat. 1549A-52. USDA has, by regulation, decided to compensate growers for lost production on a "per acre" basis. 7 C.F.R. 301.75-16(b)(1). Thus, to challenge USDA's use of planted-acreage figures to calculate lost production payments, petitioners must challenge USDA's construction of the *regulatory* term "per acre." Such a challenge would have even less merit than a challenge to USDA's interpretation of the corresponding statutory term. See, *e.g.*, *Auer* v. *Robbins*, 519 U.S. 452, 461-462 (1997).

[4] The court of appeals did note in passing that "[t]here were insufficient funds to compensate all growers on a 'grove acreage' basis." Pet. App. 16a. As shown above, however, the conclusion that the per-acre caps refer to planted acres in no way depends on the $58,000,000 appropriation's status as a spending cap.

mum that may be expended for the designated purpose. 2 United States General Accounting Office, Office of the General Counsel, *Principles of Federal Appropriations Law* 6-8 (2d ed. 1992) (*GAO Redbook*). That presumptive conclusion, however, is "subject to variation based upon underlying congressional intent." *Ibid.* Here, Section 810 stated that "[t]he Secretary of Agriculture *shall use* $58,000,000 of the funds of the Commodity Credit Corporation to carry out this section, to remain available until expended." § 810(e), 114 Stat. 1549A-53 (emphasis added). Because that language is similar to "shall be available," it triggers the presumption of a spending cap.

The legislative history confirms that the "underlying congressional intent" was for Section 810 to impose a cap on expended funds. As the court of appeals observed, the conference report on the appropriations bill explained that "[t]he conference agreement includes language (section 810) that directs the Secretary of Agriculture to use *not more than* $58,000,000 for replacement of citrus trees and for compensation for losses as a result of citrus canker." H.R. Conf. Rep. No. 948, 106th Cong., 2d Sess. 147 (2000) (emphasis added); see Pet. App. 12a. That language clearly confirms that $58,000,000 was the maximum that USDA could expend for the stated purpose. Thus, both the statute's text and its legislative history point to the conclusion that USDA could not make citrus canker payments in excess of $58,000,000.

b. Petitioners nonetheless maintain (Pet. 10-11) that this Court's decision in *Cherokee Nation* v. *Leavitt*, 543 U.S. 631 (2005), and the Federal Circuit's earlier decision in *Thompson* v. *Cherokee Nation*, 334 F.3d 1075 (Fed. Cir. 2003), aff'd, 543 U.S. 631 (2005), compel the

conclusion that the statutory language does not create a cap, and that resort to legislative history is therefore inappropriate. That contention is incorrect.

In the *Cherokee* cases, the statute at issue stated that "of the funds provided, $7,500,000 *shall remain available* until expended, for the Indian Self Determination Fund." *Cherokee*, 334 F.3d at 1089 (emphasis added) (quoting Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, Tit. II, 110 Stat. 1321-189). The court of appeals in *Cherokee* held that the "shall remain available" language was an unambiguous "term of art in appropriations legislation" that did "not [impose] a statutory cap." *Id.* at 1090. Instead, that language granted "'carryover authority,' indicating that unexpended funds 'shall remain available' for the same purpose during the succeeding fiscal year." *Ibid.* The court therefore saw no need to consult the legislative history. See *ibid.* This Court affirmed, without casting doubt on the court of appeals' construction of that language. See *Cherokee*, 543 U.S. at 643-647.

The language of Section 810 is materially different from that at issue in *Cherokee*. While the statute in *Cherokee* provided that the funds "*shall remain available* until expended," Section 810(e) provides that USDA "*shall use* $58,000,000 * * * to carry out this section, to remain available until expended." § 810(e), 114 Stat. 1549A-53 (emphasis added). To be sure, both statutes indicate that the amounts in question are to "remain available until expended." But the statute in *Cherokee* contained no equivalent of Section 810's "shall use" language—which, by virtue of its similarity to "shall be

available," presumptively creates both a spending floor and a spending cap.[5]

Additionally, as the court of appeals noted, see Pet. App. 11a, petitioners' heavy reliance upon the *Cherokee* decisions is inapt because that case involved a contract between the government and the plaintiff. See *Cherokee*, 543 U.S. at 637-638 (stressing the contractual nature of the government's liability). In the context of an exhausted appropriation, contractual liability has always been treated as a special circumstance. Specifically, "it is settled that contractors paid from a general appropriation are not barred from recovering for breach of contract even though the appropriation is exhausted." *GAO Redbook* 6-18.[6] The absence of a contractual relationship here confirms that any liability of USDA to peti-

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[5] Petitioners are incorrect to contend (Pet. 14) that the court of appeals disregarded this Court's statement in *Cherokee* that "restrictive language contained in Committee Reports is not legally binding." 543 U.S. at 646. That statement pertained only to appropriations—unlike the one at issue here—in which "Congress merely appropriates lump-sum amounts without statutorily restricting what can be done with those funds." *Lincoln* v. *Vigil*, 508 U.S. 182, 192 (1993) (citation omitted); see *Cherokee*, 545 U.S. at 646 (citing *Lincoln*). In any event, the court of appeals did not treat the conference report's "not more than" language as legally binding in itself; rather, it used that language to resolve an ambiguity in the statutory text. See Pet. App. 12a.

[6] Under a specific line-item appropriation, however, the answer is different. Because "[t]he contractor in this situation is deemed to have notice of the limits on the spending power of the government official with whom he contracts[, a] contract under these circumstances is valid only up to the amount of the available appropriation." *GAO Redbook* 6-18.

tioners ended when USDA exhausted the $58,000,000 appropriation.[7]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

PAUL D. CLEMENT
Solicitor General
PETER D. KEISLER
Assistant Attorney General
DAVID M. COHEN
MARK A. MELNICK
MICHAEL N. O'CONNELL
Attorneys

RICK D. HERNDON
CARLYNNE S. COCKRUM
Attorneys
Department of Agriculture
Regulatory Division
Office of the General Counsel

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[7] Petitioners appear to have abandoned their contention that, even if Section 810 creates a cap on total citrus canker payments, the cap has no effect on claims (such as theirs) that were asserted before USDA exhausted the $58,000,000 appropriation. See Pet. 10-15. That argument, in any event, has no merit. See *Blackhawk Heating & Plumbing Co.* v. *United States*, 622 F.2d 539 (Ct. Cl. 1980) ("[W]here * * * liability rests wholly upon the authority of an appropriation they must stand and fall together, so that when the latter is exhausted the former is at an end." (brackets and omission in original) (quoting *Shipman* v. *United States*, 18 Ct. Cl. 138, 147 (1883)).