

determining whether to issue a Limited Work Authorization (LWA-1) in this case.^{1/}

Intervenors' position may be summarized as follows:

- A. An LWA decision requires the Board to make all the environmental findings required for issuance of a Construction Permit (CP), including a finding of full NEPA compliance and an independent quantifiable cost/benefit analysis.
- B. An LWA decision requires the Board to consider all available information and review in determining whether there is reasonable assurance that the proposed site is suitable in light of Commission rules and regulations.
- C. In making site suitability and environmental findings, the Board cannot rely upon previous NRC licensing experience with light water reactors (LWRs) of the general size and type proposed, nor on standardized inputs to LWR site suitability analyses derived from LWR experience, such as the source term or guideline values for certain radiation doses.

^{1/} These contentions, previously admitted by the Board in 1975 and numbered as Contentions 2, 3, and 4, were readmitted by the Board as modified by Intervenors during the April 5, 1982 Special Meeting of Counsel and renumbered as Contentions 1, 2, and 3.

D. The Board should therefore consider the information available on the CRBR itself, including the analyses and data described in Contentions 1, 2, and 3, in determining site suitability, cost/benefit analysis and NEPA compliance.

A. AN LWA DECISION REQUIRES THE BOARD TO MAKE ALL THE ENVIRONMENTAL FINDINGS REQUIRED FOR ISSUANCE OF A CONSTRUCTION PERMIT (CP), INCLUDING A FINDING OF FULL NEPA COMPLIANCE AND AN INDEPENDENT QUANTIFIABLE COST/BENEFIT ANALYSIS.

Before the Board can decide upon a Limited Work Authorization application, it must make all the findings required by 10 CFR §§ 51.52(b) and (c) that would otherwise be made at the Construction Permit (CP) stage. The Board must, among other things:

- (1) [D]ecide those matters in controversy among the parties within the scope of NEPA and this part [Part 51];
- (2) Issue a partial initial decision that may include findings and conclusions which affirm or modify the content of the final environmental impact statement prepared by the staff;
- (3) Determine whether the requirements of sections 102(2)(A), (C), and (E) of NEPA and this part have been complied with in this proceeding;
- (4) Independently consider the final balance among conflicting factors contained in the record of the

proceeding for the permit with a view to determining the appropriate action to be taken;

- (5) Determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering available alternatives whether the construction permit or license to manufacture should be issued, denied, or appropriately conditioned to protect environmental values; and
- (6) Determine, in a contested proceeding, whether in accordance with this part, the construction permit or license to manufacture should be issued as proposed.

10 CFR §§ 51.52(b) and (c).

These environmental findings are neither "threshold" nor "superficial," as characterized by Applicants. Rather, they constitute the entire environmental record for the CRBR license proceedings, which, cannot be revisited or relitigated at the CP stage absent a change in circumstance or significant new information. See Houston Lighting and Power Company (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439 (1979). In fact, the LWA Partial Decision on environmental issues, in virtually every case, becomes incorporated into the CP decision itself. Id. The LWA proceeding, therefore, would be the only stage at which the Board addresses the compliance of the Clinch River Breeder Reactor with the National Environmental Policy Act. NRC regulations provide that "[a]ny party to the

proceeding may take a position and offer evidence on the aspects of the proposed action covered by NEPA and this part [10 CFR Part 51]".... (10 CFR § 51.52(b)(1)). As shown below, much of Intervenor's Contentions 1, 2, and 3 relate to these environmental findings.

NEPA requires not only a "detailed statement" of environmental impacts, but also that agencies explore the environmental ramifications of their proposed actions to the fullest extent possible. In discussing the proper scope of the environmental impact statement for the Liquid Metal Fast Breeder Reactor Program, of which CRBR is a part, the D.C. Circuit emphasized this point:

[NEPA] 'must be construed in the light of reason if it is not to demand what is, fairly speaking, not meaningfully possible....' But implicit in this rule of reason is the overriding statutory duty of compliance with [environmental] impact statement procedures 'to the fullest extent possible.'^{2/}

Both NEPA and Commission regulations require impact statements to discuss all probable impacts of the proposed action, not just the most probable impacts, and to discuss the potential effects of Class 9 accidents such as core disruptive

^{2/} Scientists' Institute for Public Information v. Atomic Energy Commission, 481 F.2d 1079, 1092 (D.C. Cir. 1973), quoting NRDC v. Morton, 458 F.2d 827, 834 (D.C. Cir. 1972).

accidents. Pursuant to NEPA, the Commission requires a discussion of Class 9 accidents even in cases where the safety analysis does not include such accidents in the design basis envelope.^{3/}

Finally, the Applicants' Environmental Report (ER) and Staff's final environmental impact statement (FES) must quantify the costs and benefits of the CRBR Project "to the fullest extent practicable." 10 CFR §§ 51.20(b), 51.23(c) and 51.26(a). This quantification is absolutely essential to enable the Board to independently weigh the relevant factors in its own cost/benefit analysis. As will be shown below, Intervenor's Contentions 1, 2, and 3 point out many areas in which detailed information relevant to the Board's NEPA review and cost/benefit analysis is available for the CRBR. Intervenor's wish to offer evidence at the LWA hearing regarding the applicability and validity of this information for the Board's LWA findings.

^{3/} 45 Fed. Reg. 40102 (June 13, 1980).

- B. AN LWA DECISION REQUIRES THE BOARD TO CONSIDER ALL AVAILABLE INFORMATION AND REVIEW IN DETERMINING WHETHER THERE IS REASONABLE ASSURANCE THAT THE PROPOSED SITE IS SUITABLE IN LIGHT OF COMMISSION RULES AND REGULATIONS.

In addition to the environmental findings discussed above, an LWA decision also requires determination whether, "based upon the available information and review to date, there is reasonable assurance that the proposed site is a suitable location for a reactor of the general size and type proposed from the standpoint of radiological health and safety considerations under the Act and rules and regulations promulgated by the Commission pursuant thereto." 10 CFR § 50.10(e)(2)(iii). A concrete explanation of the scope of this requirement and its application to date is necessary to demonstrate the relevance of Intervenor's Contentions to this part of the LWA proceeding.

When the LWA site suitability requirement is compared with the requirements for site suitability at the construction permit stage, it becomes clear that the required findings differ in one respect only: the CP language refers to the "proposed facility" while the LWA language refers to a "reactor of the general size and type as that proposed." None of the other site suitability "principles" cited by Applicants differ

between the LWA and CP stages. Both stages require "reasonable assurance" that the site is suitable. Both stages must take into consideration the applicable Commission siting regulations and guidelines, in particular 10 CFR Part 100, in determining radiological health and safety. Finally, both determinations must be made on the basis of available information and review to date, specified at the CP stage as the information described in 10 CFR § 50.35(a)(1)-(3). For reactors of the general size and type as those previously licensed by the Commission, the two site suitability findings have become virtually indistinguishable.

In practice, virtually every Licensing Board has endeavored to conduct the site suitability analysis at the LWA stage to the fullest extent possible in order to provide certainty to applicants, complete its environmental findings (with which many site issues are intertwined) and expedite the entire hearing process. See, e.g., Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2), LBP-78-7, 7 NRC 215 (1978). The Board usually receives evidence on and makes findings regarding compliance with every portion of 10 CFR Part 100, including information on the site's population density, meteorology, and the proposed exclusion areas and low population zones. The Board usually relies heavily on material in both the PSAR and the Staff Site Suitability Report. Id.

Utilizing the standardized LWR source term and dose guideline values derived through years of reactor experience, the Board in LWR proceedings then determines whether a reactor of the general size and type as that proposed had ever been licensed at a similar site. Such previous licensing experience is considered sufficient to provide reasonable assurance that the site is suitable, and that any design modifications found necessary after detailed safety review will be practicable and with minimal environmental and/or cost/benefit implications (See, e.g., Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), LBP-77-52, 6 NRC 294 (1977)). In cases where a site suitability issue remains unresolved at the LWA stage, Boards have been careful to use the most conservative assumptions to ensure site suitability no matter how the issue is ultimately resolved. (See, e.g., Gulf States Utilities Company, (River Bend Station, Units 1 & 2), LBP-75-50, 2 NRC 419 (1975)).

In every case Intervenor have found, the LWA Partial Initial Decision on site suitability was incorporated into the Construction Permit decision, with the only site issues litigated at the CP stage being those specifically left unresolved at the LWA stage. See, e.g., Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2), LBP-79-39, 8 NRC 602 (1978). Furthermore, despite Applicants' assertions that the CP decision is only preliminary, both

Commission precedent and policy make it clear that the issue of site suitability is closed after the construction permit stage. The operating license requirements nowhere mention site suitability. Presumably the only relevant site issue is subsumed in 10 CFR §§ 50.57(a)(1)-(2), which require reasonable assurance that the reactor can be operated without endangering the health and safety of the public. Intervenor's therefore submit that site suitability issues, like environmental issues, may be raised as an issue in an operating licensing only after a showing that the issue had not previously been adequately considered or that significant new information has developed after the construction permit review. See, e.g., Houston Lighting and Power Company (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439 (1979). This conclusion is consistent with the Commission's recent Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 458 (1981):

As a final matter, the Commission observes that in ideal circumstance operating license proceedings should not bear the burden of issues that ours do now. Improvement on this score depends on more complete agency review and decision at the construction permit stage. That in turn depends on a change in industrial practice: submittal of a more nearly complete design by the applicant at the construction permit stage. With this change operating license reviews and public proceedings could be limited essentially to whether the facility in question was constructed in accordance with the detailed design approved for construction and whether significant developments after the date of the construction permit required modification in the plant.

For the reasons stated above, Intervenor submit that the Board should make as complete a site suitability finding at the LWA stage as possible, utilizing the information available in the PSAR, Staff milestone documents, and other relevant evidence.

- C. THE BOARD CANNOT RELY UPON PREVIOUS NRC LICENSING EXPERIENCE WITH REACTORS OF THE GENERAL SIZE AND TYPE AS THE CRBR, NOR ON STANDARDIZED ASSUMPTIONS DERIVED FROM LWR EXPERIENCE SUCH AS THE SOURCE TERM OR CERTAIN DOSE GUIDELINE VALUES

As noted above, the only difference between the site suitability findings required at the LWA and CP stage is that the CP requires an analysis of the proposed facility, whereas the LWA refers only to a "reactor of the general size and type proposed." In the case of the proposed Clinch River Breeder Reactor, however, any such distinction vanishes, because no reactor of the general size and type as the CRBR has ever been licensed by the Commission, let alone considered for a proposed site. The Board therefore has no previous licensing experience whatsoever which would provide reasonable assurance that the site will be found suitable after subsequent safety review.

As discussed below, the Board must either perform a sufficient safety analysis at the LWA stage, or rely on evidence other than previous reactor licensing experience, before it can determine site suitability with reasonable assurance. Although Staff and Applicants appear to argue that

the phrase "reactor of a general size and type as proposed" relieves them of their obligation to prove specific reactor site suitability with reasonable assurance in first-of-a-kind licensing cases, Intervenor believe just the opposite case is true. The lack of previous reactor licensing experience argues for a much greater reliance by all parties on reactor-specific information. After all, the reactor whose design, proposed site, and degree of licensing scrutiny is closest to the CRBR is the CRBR itself. In fact, the original CRBR application provided detailed information on two proposed reactors of the general type and size as the CRBR -- the Reference Design and the Parallel Design. Given the Board's mandate to base its decision on all available information and review to date, there is no reason whatsoever for the Board to disregard the wealth of site suitability information already developed for the CRBR Reference and Parallel Designs. The argument of Applicants and Staff that the Board should ignore such evidence in favor of determining site suitability for a hypothetical reactor of uncertain design renders the hearing process meaningless and unnecessarily delays the ultimate site suitability determination.

Similarly, the Board cannot rely, in its CRBR site suitability determination, on several standardized assumptions derived from LWR reactor experience. In particular, the Board cannot limit its analysis of radiation dose effects to

determining compliance with 10 CFR Part 100 guideline values, since that regulation does not contain guideline values for several organs such as lung and bone, which are of crucial value in determining human plutonium doses. Similarly, neither Staff nor the Board can simply plug into the site suitability analysis the standard Light Water Reactor (LWR) source term, since it is not based on any LMFBR accident analyses, and contains no estimate of plutonium release. For both cases, in order to make a site suitability determination with reasonable assurance, the Board must consider some safety information normally deferred until the CP hearing, the extent to which is discussed below. This result is consistent with the Commission's ruling on another first-of-a-kind application in Offshore Power Systems (Floating Nuclear Power Plants), CLI-79-9, 10 NRC 257, 262 (1979):

We are not compelled to treat Class 9 accidents in precisely the same fashion in the floating plant application as we treat such accidents in connection with consideration of applications for land-based plants. Offshore's equal treatment argument applies only to parties similarly situated. Offshore's reactors will be afloat unlike any other electric power reactor we have ever licensed....Their unique siting raises a host of issues, of which the Class 9 issue is only one, which clearly justify our treating Offshore's application differently than we treat an ordinary application. Therefore, our obligation, which we have fulfilled, is to treat Offshore in a fair and rational manner, but not necessarily in the same manner we treat applications which belong in different categories.

Another factor justifies Intervenor's conclusion that the LWA-site suitability analysis requires more detailed analysis before there is reasonable assurance of sufficient conservatism. The 10 CFR Part 100 siting regulations explicitly require cautious application to first-of-a-kind plants:

In particular, for reactors that are novel in design and unproven as prototypes or pilot plants, it is expected that these basic criteria will be applied in a manner that takes into account the lack of experience. In the application of criteria which are deliberately flexible, the safeguards provided -- either site isolation or engineered features -- should reflect the lack of certainty that only experience can provide.

10 CFR § 100.2(b). See, e.g., Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 52 (1977). For a breeder reactor such as the CRBR, with accidents potentially greater than that of any other reactor, Intervenor's therefore submit that particular attention to safety analyses is warranted at the LWA site suitability stage.

- D. THE BOARD SHOULD THEREFORE CONSIDER THE INFORMATION AVAILABLE ON THE CRBR ITSELF, INCLUDING THE ANALYSES AND DATA DESCRIBED IN CONTENTIONS 1, 2, AND 3 IN DETERMINING SITE SUITABILITY, COST/BENEFIT ANALYSIS, AND NEPA COMPLIANCE.

As shown above, since the Board must determine site suitability with reasonable assurance, (a demanding standard applicable to every stage of the licensing process) but without

the benefit of previous reactor licensing experience, the Board must turn to analysis of the CRBR itself. In addition, the Board must examine the specifics of the project itself in determining NEPA compliance and cost/benefit analysis. This section will address the level of safety information and review which Intervenor believe the Board must scrutinize in order to make such determinations.

Contention 1

All parties, as well as the Advisory Committee on Reactor Safeguards, agree that a major, if not the most crucial, issue in the CRBR licensing proceeding is the potential risks and consequences of a CRBR core disruptive accident (CDA). Furthermore, both Staff and Applicants admit that the matter is not yet resolved. See, e.g., U.S. Dept. of Energy, Draft Environmental Impact Statement on the LMFBR Program (Supplement to ERDA-1535) (Dec. 1981, pp. 131-136.) On May 27, 1977, the Staff wrote to Applicants (Letter from Richard P. Denise to Lochlin W. Caffey):

As indicated in the Staff's letter of March 30, 1977, we are unable to agree with your analyses, evaluations and conclusions for CRBRP on the accommodations of a core meltdown. The principal reasons for this position is that there is an insufficient technical basis to substantiate many of your claims. The phenomena and scenarios associated with the accident are complex, and uncertainties in these are neither addressed by technical information nor enveloped by conservative assumptions.

All parties are also in agreement that resolution of the question whether CDAs should be considered in the design basis

could have a profound effect on the CRBR design and licensing review including the Board's site suitability analysis, its NEPA findings, and its cost/benefit analysis. See, e.g., Letter, dated 12/6/74, from Richard P. Denise to Peter S. Van Nort; See also original PSAR Appendix F (Parallel Design).

Given the magnitude and implications of the CDA issue for the LWA analysis, it seems imperative that this issue be decided fully and at the earliest possible time. In fact, both Applicants and Staff agree with Intervenor's that Contention 1, which deals directly with this issue, is ripe for adjudication at the LWA-1 level. Both Applicants and Staff also agree that subpart (a) of Contention 1, which challenges the ability of Applicants' "reliability program" to eliminate CDAs as DBAs, is also litigable at this stage. Yet both parties wish to remove Intervenor's ability to prove such contention by deferring until the CP stage any discussion of what the reliability program actually entails. Intervenor's are at a loss to determine how they can prove the adequacy of the reliability program if no inquiry or evidence is permitted regarding the nature of such program, its data base and underlying assumptions. Such an arbitrary bifurcation of issues serves no purpose other than to hamper Intervenor's efforts at the hearing. As demonstrated above, the lack of licensing or other regulatory precedent for this action mandates some degree of safety review of the CRBR itself at the LWA-1 stage, not just

"threshold considerations of design feasibility." Applicants, Staff and Intervenors disagree on the required scope of proof necessary to achieve "reasonable assurance," but the purpose of the LWA-1 hearing is to resolve such issues on a factual, case-by-case basis after receipt of all relevant evidence. Much of Applicants' specific Statement of Position on Intervenors' Contentions is little more than a demonstration of how Applicants intend to prove their case on the merits. (See, e.g., the listing of "relevant" HCDA inquiries on pp. 13-14.)

Intervenors disagree with Applicants' position on what constitutes relevant evidence for their admitted LWA-1 contentions, and the Board should not hamper their efforts by removing their ability to present such evidence.

Contention 2

Applicants and Staff present the same arguments regarding Contention 2 as indicated above under Contention 1. Although they concede that the adequacy of the source term assumed for the CRBR is a relevant issue for LWA-1 purposes, they disagree with Intervenors as to how its adequacy may be challenged. Once again, Intervenors do not see how, if they prevail under Contention 2(a) that the source term analysis should be performed mechanistically, Intervenors can then challenge the adequacy of the various factors involved in a mechanistic analysis under Applicants and Staff's proposal. The reasonableness or unreasonableness of any analysis cannot be

demonstrated absent an inquiry into the models, data, and codes upon which it is based. The weakness of Staff's position in particular is evident from its April 16, 1982 letter to the Administrative Judges. In that letter, Staff contends that consideration of its health effects (CRAC) code is appropriate at the LWA-1 level, but that consideration of any other code is inappropriate. This statement demonstrates that Staff and Applicants' reliance on their artificial site-specific/design-specific distinction for a first-of-a-kind reactor such as the CRBR leads to wholly unwarranted results.^{4/}

Applicants argue that no inquiry into the CDA analysis codes should be permitted at the LWA-1 stage because it is only necessary to use "realistic methods and assumptions" for the LWA-1 review. (Applicants' Statement of Position at 19.) This statement is mystifying. If Applicants are arguing that their analytical codes are by definition "conservative" rather than "realistic," that is a matter of proof to be decided on the merits. Moreover, all analyses of accident consequences, those mandated by the Commission's Policy Statement, involve the use

4/ Applicants' assertion, on p. 19 of its Statement of Position, that all matters addressed in the PSAR must be deferred to the CP is clearly repudiated by the routine reliance of Licensing Boards on PSAR material for their LWA site suitability analyses. See, Section B supra.

of computer codes, NEPA clearly requires the analyses of accident consequences and the LWA rule requires the NEPA analyses to be done prior to issuance of the LWA. The fact that a computer code is involved is hardly dispositive of the question of relevance at the LWA-1 stage.

Applicant appears to have misapplied a rather narrow concept. The Commission had held in the old Appendix D to Part 51 that for purposes of the NEPA review, the "highly conservative" assumptions and calculations used in safety evaluations should not be used because to do so would overstate the consequences of accidents. 36 Fed. Reg. 22851 at 22852 (Dec. 1, 1971). Appendix D has been superseded by the 1980 Policy Statement, supra. The Policy Statement clearly calls for the use of probabilistic estimates of accident risks for NEPA review and states that while the "detailed quantitative considerations that form the basis of probabilistic estimates" need not themselves be incorporated into the FES, they must be referenced therein. 45 Fed. Reg. at 40103, col. 1. There can be little question but that to the extent that these quantitative considerations are challenged by an Intervenor, they are relevant at the LWA-1 stage, when NEPA issues must be resolved.

Staff and Applicants' arguments are particularly disingenuous given the fact that until this moment, both parties have admitted that computer codes, test data, and other

research and development programs are extremely important in proving the ability of the CRBR to prevent and mitigate against CRBR accidents. (See, e.g., Letter, dated May 27, 1977, from Richard P. Denise to Lochlin W. Caffey; Draft LMFBR Impact Statement Supplement, pp. 122-125.) Given the magnitude of this issue, and the need for expeditious proceeding, it is imperative that the Board and all parties consider all the extensive information which is already developed and available on this issue to reach a rational decision.

Intervenors believe, therefore, that Contentions 2(f), (g) and (h), relating to computer codes, should be included in the LWA-hearing to the extent they impact the Board's required source term determination, its NEPA analysis of the risks of CDA accidents, and its cost/benefit analysis, including the extent to which imposition of additional design features at a later stage will tilt the Board's cost/benefit analysis. This conclusion applies with equal force to Contention 2(d), since the adequacy of the containment design (whether it be proven for the CRBR itself, as Intervenors contend, or hypothetically, as Staff and Applicants contend) is a valid inquiry during the site suitability and environmental analyses.

Contention 3(a)

Applicants and Staff argue that the Board should defer all inquiries into the contents and adequacy of Applicants' CRBR Safety Study (CRBRP-1) (March, 1977) because such report

involves "detailed design considerations." Intervenor repeat the mandate of 10 CFR §50.10(e)(2)(ii) that the Board base its LWA-1 site suitability decision on "all available information and review to date." To the extent such report contains information bearing upon site suitability, the Board should consider it and all challenges by Staff and Intervenor to its contents. To declare such a document irrelevant before it has even been examined seems to Intervenor a premature decision on the merits.

Contention 3(d)

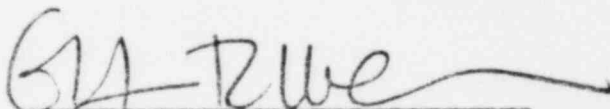
When the Board admitted the revision of this subsection to include reference to the factors of human error in accident analyses, it found that there was "sufficient specificity and nexus to the 'lessons learned from TMI' to be considered by the Board." Order Following Conference with Parties, p. 4 (April 14, 1982). Since the TMI-2 accident involved the connection between human error and a core disruptive accident, Intervenor submit that a similar inquiry for the CRBR is appropriate at the LWA stage. The result of such inquiry could affect the required site suitability, NEPA, and cost/benefit analyses.

CONCLUSION

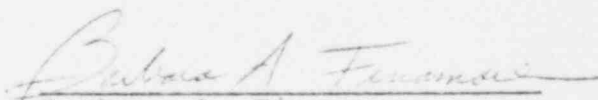
The CRBR licensing process is characterized by massive complexity, unprecedented safety issues, and lack of both relevant licensing experience and sufficient regulatory

guidance. The Licensing Board must act with sufficient conservatism at each stage of the licensing process, backed by as much information as is available, to assure that the actions based on each licensing decision can withstand the further scrutiny of the next stage. For these reasons, Intervenorors believe that inquiry into and discovery upon all matters raised by Contentions 1, 2, and 3 be permitted at the LWA-1 stage, with the relevancy of particular pieces of evidence to be decided at the hearing itself.

Respectfully submitted,



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Dated: April 20, 1982
Washington, D.C.

CERTIFICATE OF SERVICE

'82 APR 20 P2:44

I hereby certify that copies of INTERVENORS, NATURAL RESOURCES DEFENSE COUNCIL, INC. AND THE SIERRA CLUB, STATEMENT OF POSITION REGARDING CONTENTIONS 1, 2, AND 3 and RESPONSE OF NATURAL RESOURCES DEFENSE COUNCIL, INC. AND THE SIERRA CLUB TO STAFF MOTION FOR A PROTECTIVE ORDER RELATIVE TO DISCOVERY were served this 20th day of April 1982 on the following:

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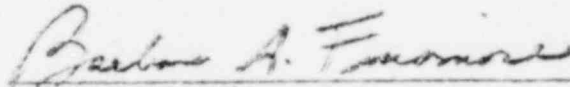
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* Denotes hand delivery.