HADOA
Houston Association of Division Order Analysts

The HADOA Quarterly

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MESSAGE FROM THE PRESIDENT

Michelle Dávila
2023 HADOA President

Hello fellow HADOA Members,

2023 has flown by! I hope everyone has had a great and fulfilling year.

It has been a great honor to serve as the 2023 HADOA President. Before I pass the torch to Cyrus Perkins, I would like to thank the entire HADOA board for their contributions and support. HADOA is important to me and I believe it is important to promote the Division Analyst Role and to recruit and train newcomers. If you know anyone who would like to join and is interested in learning more about Division Orders, please contact me or anyone on the HADOA board. It is up to us to train the next generation of DOAs.

I can honestly say that both HADOA and NADOA have both been a wonderful resource to me and have guided me throughout my career. Your memberships and contributions make it all possible and are valuable in growing and promoting our industry.

I am excited to see what our 2024 Board has in store for us and I look forward to serving as Past President and as the HADOA Advisor on the 2024 NADOA board. I hope to see you at our Holiday Luncheon on December 13th!

Please make sure to vote for our 2024 Board! An email should be sent in the next few weeks.

I would like to wish everyone Happy Holidays and a wonderful New Year.

Dates for our 2024 luncheons will be posted soon.

> Individual commitment to a group effort—that is what makes a team work, a company work, a society work, a civilization work.
>
> VINCE LOMBARDI

IN THIS ISSUE

2nd VP Announcement

In late September, Yuriana Karchut resigned from her position as 2nd Vice President. HADOA would like to thank her for her service to the Organization. The following week the HADOA Board unanimously voted in Rebekah Jones to complete the term and she will automatically move to 1st Vice President in 2024.

Congratulations

REBEKAH JONES

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Meet The Board

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The Advantages of Networking

By: Bobbie Coleman
HADOA Recording Secretary

Networking is the process of establishing and maintaining relationships with people that share similar interests, goals, or professions. Networking in the workplace is very important and benefits everyone because it can open doors to new opportunities, friendships and knowledge and what better place to do that than within HADOA.

I have served on the board in a variety of positions and with each position I acquired new skills and met wonderful people that I can call friends today and because of this I have a great support group that I can call on with questions, encouragement, and different perspectives. The Division Order Analyst position is unique to the Oil & Gas industry and the monthly luncheons hosted by the HODOA board are great opportunities to hone your networking skills. At each luncheon, the topic and speaker are different, so there will be a topic that interests everyone.

Keeping to yourself and not mustering up the courage to utter that “hello” can lead to dire consequences such as missing out on a business opportunity or a friendship of a lifetime.

Give that “Hello” a shot and see for yourself. The point is- networking can catapult your career in ways you didn’t imagine, so don’t only embrace it, pursue it.

I am glad I did!

The 5 Pillars To Creating A Loved Work Culture

By: Nichole Jaggers, PHR
Chief People Officer, Opportune LLP

Let's face it; work culture has been permanently changed by the past few years' events. From the pandemic to the great resignation, companies have had to reprioritize initiatives to meet the evolving needs and desires of employees. Even in 2023, people trends continue to change. When it comes to analyzing new job opportunities, we as individuals, all have our criteria of what constitutes a good fit —compensation, employee benefits, work-life balance elements, and more. Arguably, the most important element of an organization is its culture. Company culture impacts the candidates you attract, but creating a positive company culture is no easy task. Building a culture that people love requires an intentional approach that starts with the organization's leadership. Here are key factors that contribute to a positive and appealing company culture according to our employees and leadership:

Define Your Values

Companies need to have a clear understanding of their values and mission, and they need to communicate these values to employees, customers, and other stakeholders. At Opportune, our singular mission is to add value to our clients, people, and the community. We create and nurture a firm culture where our people feel connected, respected, and valued. We are committed to living our values – Integrity, Quality, Teamwork, Professionalism, Accountability, Sense of Urgency, and One Firm. We believe that we add value together as we learn and collaborate. These values help to create a shared sense of purpose and direction that inspires people to work together towards a common goal.

Foster A Positive Work Environment

A company culture that prioritizes employees' well-being and satisfaction can significantly impact employee engagement and job satisfaction. This includes promoting work-life balance, creating a safe and inclusive work environment, and recognizing and rewarding employee achievements. Setting your employees up for success – especially with hybrid work settings like Opportune – comes down to how you support them emotionally, intellectually, and physically. The goal is to help employees feel connected and build a sense of community, even when they are not in the office 24/7, through company-wide events and community involvement. It is important to be intentional about providing opportunities for connection.

Encourage Professional Growth & Development

Employees want to grow and advance in their careers, and companies that invest in employee development tend to have more satisfied and motivated employees. This can include offering training and development opportunities, promoting from within, and providing career advancement opportunities. In addition, professional development can bolster employees' confidence in their work. In turn, confidence in employees translates into higher overall job satisfaction, performance, productivity, and morale. While things sometimes seem basic or intuitive, doing this right can significantly impact your company culture.

Foster Collaboration & Teamwork

Companies that encourage collaboration and teamwork tend to have more engaged employees who feel valued and supported. This includes promoting open and transparent communication, creating opportunities for cross-functional teamwork, and recognizing the contributions of all team members. A company's leadership sets the tone for the culture, and leaders who model the values and behaviors they expect from employees can significantly impact creating a positive and appealing company culture. This includes taking a personal interest in employees, being transparent and accessible, and demonstrating integrity and ethics in all actions. One of the things many of our employees note in our evaluations is how Partners and senior leadership spend time interacting with and collaborating at all levels. Engagement throughout all levels of an organization isn't just good for morale; it's also good for companies' bottom lines. Reports have shown companies with a high level of employee engagement are more profitable by a factor of 21%.

Continuously Evolve

Company culture is an ongoing process and should be evaluated regularly to changing needs and circumstances. Allowing your workplace to evolve in response to changing expectations and needs will allow you to attract and retain better talent, enhance organizational efficiency, and create an overall positive work environment. This includes engaging employees in regular feedback and suggestion programs, gathering metrics on culture and employee engagement, and making changes that align with the values and mission of the company. Doing periodic evaluations is crucial for the employees and the employer. You learn your strengths and weaknesses by gathering feedback from every individual who makes up your company.

In addition, working with employees to improve their work life is essential. Employees want actions to align with the words of their company leadership. Building a company culture that people love takes time and effort, but the rewards of a positive and engaged workplace can be significant. By focusing on the values of your firm, fostering a positive work environment that encourages professional and personal growth, encouraging collaboration and teamwork across all levels, and evolving with time, companies can create an attractive and sustainable culture.

Article can be found at:
https://www.jdsupra.com/legalnews/the-5-pillars-to-creating-a-loved-work-3763405/

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2024 HADOA NOMINEES

2nd Vice President Nominee

Cheryl Hampton
Lime Rock Resources

Cheryl works for Lime Rock Resources where she has handled Texas assets for the past seven years. She previously worked for Freeport-McMoran Oil and Gas, Plains Exploration & Production, Pogo Producing Co. and Calpine Natural Gas. Cheryl has been a member of HADOA for over 20 years and previously served on the HADOA Board in various positions. She has been involved with NADOA and served on the Board as Recording Secretary, Treasurer, 2nd Vice President, 1st Vice President and as President in 2018. She has also served on many of the NADOA Institute committees serving as Chair or Co-Chair on Advertising, Publicity, Hospitality, Door Prizes and Swag Bags. Cheryl believes that it is important to be a member of the associations that serve our industry not only because of the education and networking, but for the friends you make being involved in them. She enjoys mentoring and helping those getting started as DO analysts. In her spare time, she enjoys camping, reading and spending time with family and friends. Cheryl is the proud mother of three grown children; two of them are also employed in the oil and gas industry. She is also the proud grandmother of four grandchildren. She and her husband live in the Clear Lake area with their five four-legged kids.

2024 HADOA NOMINEES

3rd Vice President Nominee

Jason Alexander
Lime Rock Resources

Jason J. Alexander is a Division Order Analyst who has been working in the industry for over 18 years. He has Having cut his teeth in the business with first purchaser Plains Marketing, L.P.; he moved on to Lime Rock Resources shortly before the pandemic. There he works as part of the team managing their North Dakota assets.

Jason has previously served HADOA as Corresponding Secretary & Third Vice President. He also served as the 2022 NADOA board as their Corresponding Secretary. He attended the 50th Annual NADOA Institute in Louisville, KY in 2023 where he successfully passed all three sections of the organization's Certification Exam. He will be a CDOA effective Jan 1, 2024.

When not studying for the CDOA or setting up Reverse & Rebook decks; Jason enjoys cooking and playing games with family and friends. Over the past couple of years this Eagle Scout has thoroughly enjoyed reconnecting with Scouts BSA where he is one of the Assistant Scoutmasters of his daughter Troop. In 2023 he also completed his Wood Badge training and is in the process of working his Ticket.

Jason hopes to have the opportunity to again serve the HADOA board and its members as the 2024 Third Vice President and Membership Committee Chair. He looks forward to connecting with new and returning members and in assisting the chapter grow in both number and caliber.

Here is to a great end to 2023 for all our members and more open-minded collaboration in our industry and world overall in the year to come.

2024 HADOA NOMINEES

Corresponding Secretary Nominee

Roxane Taho
Grayson Mill Energy

Roxane earned her Bachelor's in Multi-Disciplinary Studies in 2009 from the University of Oklahoma. While she initially delved into Accounting and Finance roles, her heart was set on the dynamic world of Oil and gas. There, she worked in various roles finally finding her niche and passion in Division Orders. Beyond her professional endeavors, Roxane has been an active member of HADOA since 2018, currently serving as the organization's corresponding secretary. She's keen on contributing further to HADOA's growth leveraging her skills in digital competence, creativity, and leadership. Her intention to serve a 2nd term on the Board of Directors reflects her commitment to dedication, resilience, continuous improvement, and fostering a sense of community. Outside the office, Roxane finds joy in family moments and dog walks with Banjo. Her adventurous spirit finds expression in hobbies like traveling, exercising, and cooking. Committed to her church and community, she engages in volunteering roles, embodying a spirit of service.

2024 HADOA NOMINEES

Recording Secretary Nominee

Kimberly Jones
Coterra Energy

Kimberly Jones, a dedicated Division Order Tech with six years of experience in the field, she's demonstrated her expertise at top-tier energy companies, including Exxon Mobil, Southwestern Energy, and currently, Coterra Energy Inc.

Kimberly's career has been a remarkable journey through diverse assets. She's had the privilege of working on notable acquisitions, including Anadarko, Haynesville, and her current endeavor in the Permian Basin. What sets Kimberly apart is her unwavering commitment to helping others and embracing challenges.

2024 HADOA NOMINEES

Committeeman Nominees

Tyrell L Allen, MBA
Coterra Energy

Tyrell Allen is a highly motivated and passionate land administration professional (Division Order Analyst, Lease Analyst, Systems & Reporting Analyst) with over 15 years of experience in the Oil & Gas Industry with extensive knowledge of every aspect of Land Administration functions. Tyrell Allen is currently a Lead Division Order Analyst for Permian asset at Coterra Energy. His previous company experience includes EP Energy, EL Paso Production, Shell Exploration, Halcon Resources, & PetroHawk. Tyrell Allen is passionate about all things Land Administration and strengths include Division of Interest Calculations, Title Curative, Systems, and Reporting. Tyrell Allen is a graduate of the University of Houston with a Bachelor of Science degree in Psychology & Marketing and has a graduate degree in Business Administration. Outside of work he loves hanging out with his wife and 3 kids, playing pickup basketball, eating pancakes, and learning how to play the bass guitar.

Tony Crabs, CPL
Trinity Operating

I bring over 30 years of Division Order experience and knowledge as an analyst and supervisor to the table and will provide wisdom and insight to collaborate with fellow board members to promote the membership within the industry and supporting companies.

2024 HADOA NOMINEES

Committeeman Nominees

Catrina Brewer
CAMS Management

Catrina Brewer has been in the E&P industry for several years, serving such roles Owner Relations, Division Order and Land Analyst. She's currently transitioning to the Renewable Energy—primarily working with Wind and Solar leases at CAMS (Consolidated Asset Management Services) in Houston, Tx.

Kelsey Enke
Opportune LP

Kelsey is currently a Division Order Technician at Opportune LP. She has been working in the oil and gas industry for over 9 years, gaining a variety of experience with division orders and leases by working multiple geographical areas in conjunction with title teams and Landmen. Her previous role was a Lease Analyst for EOG Resources where she was a critical player in ensuring the proper setup and maintenance of company assets. Kelsey grew up in the Tomball and Magnolia areas and is currently a student at Sam Houston University working towards her BBA. When she's not at the office you can find her enjoying the outdoors camping or gardening.

BALLOTS FOR VOTING TO BE EMAILED ON NOV 27 - DEC 01

Those Who Favor Fire: An Odyssey of Flaring in Texas

By: Caleb A Fielder, Esq.
Repsol

I. INTRODUCTION: UNIMAGINABLE WASTE

In light of the manifest benefits wrought by oil and gas, it is perhaps a damning indictment that, since their discovery, we have managed to find a way to waste them. In 1894, even before Spindletop, the City of Corsicana, Texas, unwittingly became Texas's first oil boomtown and, by 1897, so many wells were drilled that production flooded the market.**1** Unable to find a market and with no forethought to storage, many operators simply dumped their surplus oil onto the bare ground. **2**

Natural gas took even longer to find a market.**3** In the early days of the industry, an unlucky operator who discovered he had drilled a gas well would often simply cap it and forget it.**4** It did not take long for the industry to discover that when natural gas is permitted to expand rapidly, as when the gas is emitted from a wellbore, a small fraction of it will condense to liquid.**5**

In the 1930s, this condensate could be used in automobiles like refined gasoline.**6** Profit-driven operators found they could drill a gas well, strip out and save the condensate, and simply vent the leftover majority of gas into the atmosphere.**7** Initially, we did not even have the good sense to burn it on the spot, but once the hazard was made clear, oil companies started to flow the gas up pipes and ignite it.**8** They flared it.**9**

Oil wells likewise invariably produce gas.[10] This gas, often referred to as "casinghead gas" or "associated gas," was often considered worthless in the early days of the industry and thus flared.[11] Industry lore is replete with stories of drivers capable of navigating the highways at night without their headlights due to the illumination provided by the flares.[12] Indeed, "you could drive from Dallas to Houston in the nighttime without ever turning on your headlights, so bright were the flames shooting from ubiquitous oil wells."[13] "Miles away from any major oil field, newspapers could be read easily at night by the light of these flares."[14]

Regulating this waste (much less eliminating it) proved difficult.[15] An 1899 law required any gas well to be shut-in unless and until the gas could be used for light, fuel, or power.[16] A combination of court decisions and industry-backed lobbying had effectively nullified this law by 1933, however.[17] Finally, in 1935, the Texas Railroad Commission (the Commission) was empowered to enforce an effective ban on flaring from gas wells.[18]

While obviously a step in the right direction, flaring from an "oil" well was still fair game. This in turn set off a game of cat and mouse between the Commission and creative producers attempting to classify their wells as oil.[19] The law, still on the books today, classifying a gas well as one that "produce[s] 100,000 or more cubic feet of gas for every barrel of oil," can be traced back to this time period.[20] The Commission records indicate that the 1930s and 1940s witnessed approximately 100 Bcf of gas wasted per year in flaring (the Commission did not keep records before 1936).[21] This may have been an underestimate. "produce[s] 100,000 or more cubic feet of gas for every barrel of oil," can be traced back to this time period.[20]

The Commission records indicate that the 1930s and 1940s witnessed approximately 100 Bcf of gas wasted per year in flaring (the Commission did not keep records before 1936).[21] This may have been an underestimate.

> The best estimate from the early 1940s is that one and a half billion cubic feet of casinghead gas was flared each day from Texas's larger fields; that would make the state total for all fields about two and a half billion per day, or over ninetenths of a trillion a year.[22]

A. The Rise of Bill Murray

Every so often, fate delivers a man perfectly suited for the challenge at hand. In Texas, in the 1940s, that man was William "Bill" Murray, Jr.[23] Born in Coleman, Texas, Murray grew up in the oilfields by his father's side.[24] After graduating as

salutatorian from Cisco High School, Murray attended Simmons College (now Hardin-Simmons University) on scholarship before transferring to the University of Texas.[25] He received a bachelor's degree and then a master's degree in petroleum engineering, graduating with the first class to complete the program.[26] He received a Dean's medal "for the highest number of grade points in the Engineering School"—a record that apparently stood at least until his death.[27]

Murray graduated in 1937 and, after a brief stint in the private sector, he joined the Commission as a senior petroleum engineer.[28] The Commission promptly sent him to the field to test wells for their oil-to-gas ratios, and it was there that Murray witnessed firsthand the enormous volumes of gas ignited and wasted through flaring.[29]

Labeled a conservationist, Murray left the Commission in 1941 to join the Petroleum Administration for War in Washington, D.C., after the United States joined World War II in December.[30] Murray raised his concerns about flaring there as well but was largely ignored.[31] After the war ended in 1945, Murray returned to the private sector in Texas—first at Wheelock & Collins Oil Company in Corsicana, then at Houston Industrial Gas Company.[32]

Meanwhile, confrontation was brewing between D.C., enlarged and expanded via a series of "New Deal" legislation,[33] and Texas where freedom from federal oversight was a cherished goal.[34] The Federal Power Commission, predecessor to the Federal Energy Regulatory Commission,[35] had long considered extending its authority over the entire gas industry.[36] In the mid-1940s, the leadership of the Texas Railroad Commission consisted of Ernest Thompson, Olin Culberson, and Beauford Jester: all stalwart defenders of states' rights.[37] In an attempt to head off any attempted federal interference, the Commission announced a special hearing to address the topic of gas flaring.[38] The Commission presented official figures to establish that the Commission had the situation under control.[39] After all, the Commission flared only approximately 3.7 Bcf of casinghead gas in all of 1943, out of 400 Bcf produced, which is less than 1%—so what was the big deal?[40] Commissioner Thompson insisted these volumes were both reasonable and of no danger to conservation.[41]

Murray was in attendance and suddenly announced that, from his personal experience working for the Commission, he knew these figures to be a gross underestimation.[42] Indeed, royalty owners and taxpayers knew only a fraction of the true amount of gas wasted.[43] The accusations produced something of a sensation; the local press covered them, and the pressure forced the Commissioners to appoint a committee to look into the matter.[44]

They asked Murray to chair the committee, but he refused, insisting on his own smaller committee consisting entirely of engineers.**45** Published in November 1945, the "Murray Committee Report" declared that the state's oil companies were burning nearly 1.5 Bcf of gas per day, "57 percent of the state's total production."**46**

Nothing happened as a result—at least not immediately.**47** Murray possessed a combination of expertise and civic duty that rarely succeeds in politics, and many of the state's largest producers were enraged with his report.**48** All indications were that Murray would remain powerless to do anything material to stamp out flaring.**49**

The Commission has long been a breeding ground for those lesser politicians seeking higher office, and the 1940s proved no exception.**50** The then Chairman of the Commission, Beauford Jester, was elected Governor of Texas in 1946, and—in an act of almost reckless political courage—nominated Bill Murray to serve the remainder of his unfinished term at the Commission in January of 1947.**51**

Murray was thirty-one, making him the youngest commissioner ever to serve.**52** Under his watch, the "Railroad Commission became a conservation tiger,"**53** issuing a series of orders shutting in oil wells across multiple fields in Texas for flaring.**54** These orders generally prohibited oil or gas production until the gas associated with that production could be committed to a lawful purpose such as light, fuel, chemical manufacturing (other than carbon black), or reinjection.**55**

B. The Flaring Cases

The industry pushed back. . .hard. The Seeligson Field in South Texas was one of the first targeted, and there were giants there in those days: Magnolia (Mobil), Sun, and Shell (among others) all filed suit.**56** Shell retained Daniel J. Moody, a former governor, as their attorney.**57** The oil companies argued, among other things, that the Commission lacked the statutory authority to issue its order.**58** The Texas Supreme Court, while upholding a temporary injunction against the Commission, expressly sustained the Commission's authority over such matters.**59** The court noted:

> the Commission has both the authority and the responsibility of prescribing fair and reasonable rules to prevent the waste of casinghead gas whenever, under the circumstances presented, it appears that a preventable waste of this natural resource either is occurring or is reasonably imminent, and that in this undertaking the Commission's acts are well within the perimeter of its delegated powers.**60**

Emboldened by this latest development, the Commission ordered every oil well across sixteen gas-flaring fields shut down in 1949.[61] The producers in those fields brought suit almost immediately.[62] The operators, Sterling Oil and Refining Company as well as others, this time out of the Heyser Field, argued "that the order was illegal, unjust, unreasonable, arbitrary, and discriminatory. . . ."[63] Moreover, like Shell, they also insisted the Commission lacked statutory authority to issue the order.[64]

Similar to Shell, the producers prevailed at the trial level, with the 98th District Court of Travis County declaring the Commission's order invalid and enjoining it from enforcement.[65] The Texas Supreme Court backed the Commission unambiguously, noting "[i]t is quite clear that the Commission, in the exercise of its duty as prescribed by the statutes, was trying to prevent waste in the flaring of gas."[66]

The lawsuits continued; the Flour Bluff Oil Corporation, Humble Oil and Refining Company, and Barnsdall Oil Company filed suit for a similar order in the Flour Bluff Oil field.[67] Again, the trial court sided with the producers, and the Austin Court of Appeals backed the Commission.[68] The oil companies went to great lengths to establish that the permitted uses prescribed by the Commission were simply too expensive.[69] The court was unconvinced:

> If the prevention of waste of natural resources such as gas is to await the time when direct and immediate profits can be realized from the operation, there would have been little need for the people of Texas to have amended their Constitution by declaring that the preservation and conservation of natural resources of the State are public rights and duties and directing that the Legislature pass such laws as may be appropriate thereto. . . , for private enterprise would not need the compulsion of law to conserve these resources if the practice were financially profitable.[70]

There were occasional victories for the oil sector during this time.[71] Operators in the Spraberry field, including Magnolia Petroleum, Rowan Oil Company, the British-American Oil Producing Co., Shell Oil, and others, filed suit against the Commission.[72] Magnolia Petroleum retained former governor Daniel Moody to represent it.[73] The Commission had once again shut down all the flaring oil wells in the field and in an attempt to protect correlative rights, had shut down the non-flaring wells too.[74] The order was struck down, but the power of the Commission to shut in a flaring well was confirmed inviolate.[75]

These developments have been hailed as "a great milestone in conservation,"[76]

with one historian insisting that "[t]he war had been won" and proclaiming the elimination of flaring.**77** With the benefit of hindsight, we can see that the battle, perhaps, had been won, but the war against flaring and waste would continue.**78**

II. THERE ARE NO HEROES IN THE OIL PATCH: WILLIAMS, EXCO RESOURCES, AND THE RAILROAD COMMISSION

Flarers and pipeline companies have long been at odds with each other.**79** In Texas's enormous Panhandle field in the 1930s, for example, operators sought simply to strip condensate from gas and flare the remainder.**80** These designs brought them into direct confrontation with pipeline companies that had discovered there was good money to be made transporting the gas to northern cities.**81** They made convenient bedfellows for the conservationists.**82** "The fight between pipeline and stripping interests over gas, therefore, took on the mantle of an argument over the public interest, with the public at large and the Railroad Commission as interested spectators."**83** This continues to this day.

On November 20, 2019, the midstream powerhouse, Williams Partners, LP, and its subsidiary, Mockingbird Midstream Gas Services, filed suit against the Commission of Texas over the regulatory body's decision to allow EXCO Resources to flare gas from the company's Eagle Ford wells.**84** "Natural gas flaring has long been recognized as wasteful and environmentally harmful," Williams stated in its petition.**85**

The press could scarcely contain themselves: a battle between two juggernauts, one private and one public, over a hot-button environmental issue. The suit garnered a tremendous level of attention, not just from local outlets like the San Antonio Current**86** and the San Antonio Business Journal,**87** but the Houston Chronicle**88** and the Texas Tribune**89** as well. Bloomberg weighed in,**90** and publications as far afield as Alaska**91** covered the story. No less an authority than the Wall Street Journal breathlessly proclaimed it a "Texas Showdown" over flaring.**92** And then? Nothing. The parties quietly settled the case, and the court dismissed it the following summer.**93** The fiery story had fizzled as COVID-19 dominated the headlines and oil prices hit record lows.**94**

What happened? How had this conflict come about, and why, after so much fanfare and saber-rattling, did the conflict seemingly fade away? It should come as no surprise to veterans of the U.S. onshore oil industry that the story—like so many others in the oil patch—started with Aubrey McClendon.**95**

The year was 2012. That spring had seen oil prices comfortably above $100 per

barrel,[96] and oil and gas companies made up 12% of the S&P 500.[97] Life was good. Chesapeake Energy was the second-largest leaseholder in the Eagle Ford, with nearly half a million net acres.[98] In the second quarter of 2012, they were running twenty-eight rigs in that basin and had brought online 121 new wells.[99]

The company had just sold a third of their acreage position to the Chinese National Offshore Oil Corporation (CNOOC), in 2010, for the princely sum of $2.16 billion,[100] as part of a wave of foreign money that had seen companies like Mitsui & Co., the Korea National Oil Corporation (KNOC), Sasol,[101] and Total[102] paying enormous price tags (often with a hefty promote) to get a piece of the North American shale craze.

Chesapeake was in desperate straits, and they were eager to show investors that they could monetize their way out of a dangerously high debt load that totaled over $13 billion at the end of 2012's first quarter.[103] Pressure was mounting on all sides; the company had just stripped McClendon of his chairmanship in the wake of news that he had taken over a billion dollars in loans out against personal stakes in the company's wells.[104] Equally scandalizing was the news that he (and co-founder Tom Ward) had been running a private hedge fund out of the company's headquarters.[105]

Chesapeake was now on a deal-making spree in an effort to raise cash and assure shareholders.[106] McClendon (and thus Chesapeake) had become famous (even notorious) for the aggressive and innovative approach to raising capital.[107] By the end of the first quarter, he had announced deals totaling $2.6 billion, which included a volumetric production payment sale to Morgan Stanley, flipping 58,400 acres to ExxonMobil subsidiary XTO, and the spinoff (and subsequent sale of shares to a Blackstone affiliate) of an Oklahoma leasehold subsidiary.[108]

Chesapeake still had a long way to go, however. They had promised shareholders they would accomplish $10 billion worth of asset sales before the end of the year.[109]

Few assets were exempted from the auction block, and McClendon cast a hungry glance towards the company's gathering infrastructure: its network of flowlines, processing facilities, pumps, separators, tanks, treaters, valves, compressors, dehydrators, and other various and sundry equipment responsible for transporting oil and (especially) gas from the wellhead to the numerous shipping points scattered across the edges of Chesapeake's many fields.[110]

A. Master Limited Partnerships and Gathering Agreements

The oil and gas industry had long ago discovered that these gathering systems could be the source of additional revenue.**111** The separate components being worth more than the sum of their parts, companies were siloing off their gathering infrastructure into separate entities, entering into contracts between their upstream entity and new gathering subsidiary with a guaranteed rate of return, and then spinning off the gathering entity into its own (often publicly traded) Master Limited Partnership (MLP).**112**

MLPs originated in the upstream oil and gas sector in the 1980s, mostly staying below the radar until spreading to the midstream sector during the early waves of the shale revolution.**113** Historically, the MLP was valued for "the stability and predictability of its cash flow",**114** and midstream MLPs in particular were touted for their "minimal exposure to direct commodity price risk."**115** MLPs are structured around cash flow; indeed, they are required to distribute all available cash to the owners of the partnership units.**116** Moreover, they are not taxed at the entity (MLP) level; instead, as a pass-through entity, the profits are taxed at the level of the individual unit holders.**117**

The source of a midstream MLP's cash flow is its gathering agreements, the contracts that the MLP has with the upstream oil and gas producer to gather the gas at the wellhead and process and transport it to the requisite delivery point.**118** There are numerous fee models employed by the contracts,**119** but it is often a kind of tolling arrangement—the MLP gathers the gas, and the owner of the gas pays a toll on each unit (each Mcf, for example) for gas that passes through the gathering system.**120** This is why midstream MLPs are considered minimally exposed to commodity price, as their cash flow is based not on selling the commodity but merely transporting it.**121**

In 2010, Chesapeake partnered with a private equity fund, Global Infrastructure Partners (GIP), to launch Chesapeake Midstream Partners.**122** By the end of that year, Chesapeake sold its Haynesville gathering system to the MLP.**123** It sold its Marcellus gathering infrastructure to the MLP at the end of 2011.**124**

In mid-2012, with debts mounting and desperate for cash, Chesapeake sold all of its interest in Chesapeake Midstream Partners to GIP for $2 billion.**125** Then at the end of the year, Chesapeake sold its remaining gathering infrastructure, including its Eagle Ford gathering system, to the MLP (now renamed Access Midstream Partners) for another approximately $2 billion.**126** At the same time, midstream giant Williams purchased 50% of Access Midstream Partners.**127** As one industry

commentator described it, "the two deals are connected. . . . On paper, Chesapeake sold its midstream properties to Access, but [in] practice it seems the sale was actually to Williams via Access Midstream."**128**

Chesapeake's Eagle Ford gathering system was called the "Mockingbird System", and it would eventually consist of approximately 1,000 miles of pipelines spanning the counties of Zavala, Webb, McMullen, La Salle, Frio, Dimmit, and Atascosa.**129** The original gathering agreement for the Mockingbird System was a simple fixed-fee arrangement.**130** Chesapeake (and their non-operated joint working interest owner, CNOOC) paid $0.36/MCF to its then wholly-owned gathering subsidiary under this arrangement, along with a small annual escalation of 2.5%.**131**

When Chesapeake sold the Mockingbird System to Access Midstream (and Williams), however, it renegotiated the gathering agreement. The company scrapped the fixed-fee arrangement and used a cost-of-service model.**132** The Chesapeake leases and wells were dedicated under this agreement for twenty years, and the tolling fee was designed to ensure that Access Midstream earned a fixed rate of return on the $1.6 billion it would spend acquiring and building out the Mockingbird System.**133**

Cost-of-service models are popular with midstream MLPs precisely because of the fixed (sometimes referred to as guaranteed) rate of return. Given the high value associated with consistency of cash flow, the fixed rate of return for the MLP's capital expenditures proved a valuable selling point for yield-hungry investors.**134** The two biggest factors under a cost-of-service model are (1) the volume of gas and (2) the capital expenditures.**135** Each unit of gas is assessed a fee and the stream of payments is discounted to year zero to achieve the mandated internal rate of return.**136** The formula is recalculated annually to utilize the most updated production forecast and capex figures.**137** If the volumes of gas produced (or forecasted) go up, there are therefore more units of gas on which to collect a toll, and the individual fee goes down.**138** Conversely, if the volumes of gas go down, the fee goes up.**139**

When the parties renegotiated the Mockingbird Agreement concurrent with the sale to Access, they set the rate of return at 18%.**140** Speculation abounded that Chesapeake had agreed to such a steep IRR to obtain top dollar on the sale of its gathering system.**141**

The following year, in the wake of McClendon's departure from Chesapeake, the company sold its interest in 130 of its wells to EXCO Resources.**142** The sale, which included Eagle Ford and Haynesville interests, netted the company $1 billion.**143**

Neither EXCO nor CNOOC participated in the negotiations of the new Mockingbird Agreement, and technically, neither of them were parties to the agreement.**144** Chesapeake had separate arrangements with each, resulting in a situation wherein it either purchased the gas outright and then nominated it on the Mockingbird system (as with EXCO),**145** or marketed the party's gas on its behalf (as with CNOOC).**146** Both CNOOC and EXCO, however, could, in theory, elect to take their production in kind and negotiate directly with Access Midstream to gather their gas. Such a scenario could have been disastrous for Chesapeake—the gas volumes owned by EXCO and CNOOC were from wells dedicated to the Mockingbird System.**147** If those entities took their production in kind, Chesapeake would no longer get credit for those volumes under the Mockingbird Agreement, and when volumes go down, the price Chesapeake would have paid to gather its remaining gas under the agreement would have gone up.

To avoid this scenario, Chesapeake again resorted to aggressive and innovative measures.**148** It included a provision in the Mockingbird Agreement that if Williams ever agreed to gather "third party" gas from dedicated wells (i.e. CNOOC or EXCO gas from wells already dedicated to the Mockingbird System), Chesapeake would be credited under the cost-of-service calculation as though Williams was receiving the full-system fee for those third-party volumes.**149**

In 2014, Williams acquired the remaining half of Access Midstream Partners.**150** The giant midstream entity now owned 100% of the Mockingbird System.**151**

Over the course of the ensuing years, either one or both EXCO and CNOOC would seek to take their production in kind and negotiate directly with Williams to gather their gas.**152** Not wanting to jeopardize the 18% rate of return that Williams had secured for itself for its vast capital outlay in acquiring and building out the Mockingbird System, Williams demanded the CNOOC and EXCO pay the same rate as Chesapeake was paying under the Mockingbird Agreement.**153**

This extreme sensitivity to volumes underscores one of the fundamental weaknesses within a cost-of-service model. Under many other gathering fee models (such as a fixed-fee arrangement), a reduction in volumes will not, in and of itself, impact the fee charged on a per unit of gas basis.**154** With a cost-of-service model, however, a reduction in volumes will have an enormous impact.**155**

In November of 2014, OPEC elected to vastly increase production, and the first of many crashes to the price of oil ensued.**156**

As has been seen time and again, a reduction in the price of oil often leads to a

reduction in wells drilled, as oil companies are forced to allocate their capital in a more disciplined manner (at least in theory).**157** A production forecast for the life of an oil field when oil is $100/bbl can look very different than when oil is at $70/bbl—or $50, or $30.**158**

In the context of a gathering agreement under a cost-of-service model, this can lead to a death spiral. If an oil company plans to drill fewer wells in a given year because of a decrease in the price of oil, this will of course, negatively impact the total production coming from that field.**159** Under a cost-of-service gathering agreement, such a revised production forecast will yield an increase in the gathering fee.**160** Those increased costs negatively impact the profitability of a proposed well as much as a reduction in oil price, and as such, all things being equal, an increase in the gathering rate may cause an oil company to drill fewer wells. The spiral thus perpetuates itself as fewer wells means lower volumes resulting in still higher gathering fees.

Like a snake eating its own tail, the cost-of-service model begins to consume itself. By May of 2017, the gathering rate under the Mockingbird Agreement was $6.67/MMBTU.**161** The rate paid by other "similarly situated" producers was $0.99/MMBTU.**162**

EXCO (and CNOOC) refused to pay the Mockingbird Agreement rate, demanding that they pay a "market-based" rate that would yield something closer to the $.099/MMBTU figure.**163** Williams refused to budge. As a result, EXCO chose to flare its gas.**164**

B. The Rule 32 Exception

Rule 32, governing the flaring or venting gas, was adopted by the Commission in 1978.**165** It permits an operator to flare for ten days following the completion of a particular well, provided the volumes are measured and reported.**166** Beyond this ten-day window, the operator must seek an exception under Rule 32 from the Commission; which can last up to 180 days.**167** Further extensions beyond this 180-day window can be granted pursuant to a "final order" signed by the Commission.**168** A finding of necessity is required for any permitted exception to Rule 32.**169**

Then, in 1990, the Commission modified the rule, expressly providing that the flaring of casinghead gas was necessary due to the "unavailability of a gas pipeline or other marketing facility."**170** That gas pipelines were frequently unavailable in those oilfields subject to Bill Murray's shut-in orders in the 1940s

had apparently been forgotten by 1990.171

It was this regulatory framework that EXCO sought to avail itself. Despite the fact that a gathering system was present and connected, EXCO argued that because it had no gathering agreement with Williams (and EXCO and Williams were unable to agree to one) the system was thus "unavailable."172 Assuming a market price of $2.85/MMBTU for its gas, EXCO maintained that it would be uneconomical to pay over $6/MMBTU to utilize the Mockingbird System.173 The Commission agreed and granted the exception. 174 EXCO could continue to flare 100% of its casinghead gas on all of its 138 wells.175

III. A BATTLE ON MANY FRONTS

The jousting between EXCO Resources and Williams was scattered along multiple fields of play.176 Williams contested EXCO's application for the Rule 32 exception, something never done before in the history of the rule.177 EXCO responded by filing an action in the Bankruptcy Court for the Southern District of Texas (EXCO had filed for bankruptcy in January of 2018) claiming that Williams' actions had violated the automatic stay.178

Williams was undaunted, and, after the final order was issued approving EXCO's flaring request, the midstream juggernaut filed suit against the Commission seeking judicial review of the entity's orders permitting the flaring exceptions.179

A. Williams v. The Railroad Commission

Williams alleged that the Commission, in granting the exceptions, "vitiate[d] and effectively negate[d] the statutory prohibition of waste and the requirements of the Commission's Rule 32."180 The pipeline company sought the reversal of the order "so that Rule 32 is interpreted and applied consistently with the Texas Constitution, the waste prevention statute, and court precedent to prevent waste."181

Citing many of the same flaring cases from the 1940s, Williams sought to contrast the "dramatic shift in recent years from the previous policy . . . that eviscerates the no-flaring rule."182 Williams pointed to Rule 32's language requiring that all gas be utilized,183 and that any exception to the prohibitions contained therein required a showing of "necessity."184 Williams argued that there was no case for necessity in this flaring order.185 The Commission had justified its order, in part, due to a finding that there was no available gathering system because there was no agreement in place between EXCO and Williams.186 Williams insisted that this

was not a situation where new wells were drilled in an exploration area beyond the reach of pipelines.**187** Rather, multiple gathering systems were available, it argued.**188** Williams also took aim at the gas economics metric adopted by the Commission in granting the exception.**189**

The Commission had adopted EXCO's position that it would have been uneconomical to connect to the Mockingbird System, because the cost to gather the gas would far exceed the revenues that EXCO would recognize from the sale.**190** Williams quoted the Flour Bluff case, and noted that it "is only with 'negative gas economics' that operators request an exception. . . ."**191**

While the author would never question the environmental sensitivities of a giant pipeline company, the reader may wish to entertain the possibility that Williams's 18% rate of return weighed just as heavily on its conscious as did its concerns for flaring and the environment. Regardless, Williams faced an uphill battle. The Commission's order would have been reviewed under the substantial evidence rule, wherein significant deference would have been granted to the agency.**192** Moreover, the Commission's order would have been presumed valid and its findings (including that there was no pipeline available) presumed supported by substantial evidence.**193** Williams would have the burden of overcoming those presumptions.**194** Moreover, courts typically defer to the Commission's interpretation of its own rules, "unless that interpretation is clearly erroneous or contrary to the plain language of the rule."**195**

We will never know. By the summer of 2020, Williams and EXCO had entered into a gas gathering agreement and executed a settlement agreement.**196** EXCO's flaring ended and the parties jointly requested the court to order a dismissal.**197** What happened?

B. The Gas Utility Docket

The origins of the settlement lay with CNOOC, the Chinese National Offshore Oil Company, with the one-third non-operating interest in Chesapeake's wells (including the ones sold to EXCO).**198** In February of 2017, CNOOC had filed a formal complaint with the Commission over the rates Williams sought to charge it for accessing the Mockingbird System.**199**

As previously discussed, Williams demanded that CNOOC and EXCO pay the same rates as Chesapeake was paying under the Mockingbird Agreement.**200** These rates actually consisted of two distinct elements: the first, a recoupment of the ~$1.6 billion Williams spent acquiring and building out the Mockingbird System

(the cost-of-service model); the second, the cost of the actual ongoing gathering services.**201** That is, in quoting a rate to CNOOC and EXCO, Williams was insistent that they repay the approximately $1.6 billion that Williams had spent acquiring and building out the Mockingbird System.**202**

Intrastate gas gathering systems like the Mockingbird System are subject to the Texas Utilities Code,**203** and the Commission has regulatory jurisdiction over such systems.**204** Among other requirements, a gas gathering utility may not "charge, demand, collect, or receive from anyone a greater or lesser compensation for a service provided . . . [that it does] from another [party] for a similar and contemporaneous service."**205** This, of course, was precisely what CNOOC and EXCO alleged Williams had done.**206**

In determining whether a gas gatherer is discriminating, the Commission looks to "similarly-situated shippers," that is, "any shipper that seeks or receives transportation services under the same or substantially the same, physical, regulatory, and economic conditions of service."**207** This proved to be the crux of the dispute between CNOOC and EXCO against Williams on this docket—which shippers were "similarly-situated?"**208**

CNOOC and EXCO pointed to various third-party shippers that were utilizing the same system and paying as low as $0.99/MMBTU versus the "Chesapeake rate" of $6.67/MMBTU.**209** These parties, CNOOC and EXCO argued, were similarly situated, and Williams' failure to extend CNOOC and EXCO the same or similar terms was unlawful discrimination under the Texas Utilities Code and the applicable rules of the Commission.**210**

Williams, in contrast, insisted that Chesapeake was the appropriate benchmark for a similarly situated shipper.**211** The Mockingbird System and its subsequent buildout were constructed primarily for the very wells that CNOOC and EXCO produced from, and therefore it only made sense to treat those two companies the same as Chesapeake.**212**

The Commission's Hearing Division and its Administrative Law Judge, John Dodson, sided with CNOOC.**213** In rejecting Williams's argument, it noted that any upstream producer utilizing the Mockingbird System benefited from its existence, not just CNOOC and EXCO.**214** "[CNOOC] and EXCO being beneficiaries of the Mockingbird System . . . is not a permissible basis for shouldering them with repaying [the $1.6 billion Williams spent on the system] if other shippers—also beneficiaries of the same gathering system— repay nothing."**215** Indeed, for other "similarly situated" shippers, the Commission observed: "Williams did not require

them to repay . . . the $1.6 billion . . . . Instead, they only paid their own 'connection costs' to connect their facilities to the already-built Mockingbird System."[216]

Had the Commission sided with Williams, it is likely the pipeline company's suit against the Commission would have proceeded with the goal being that EXCO (and CNOOC) would have been forced to cease flaring and therefore execute a gathering agreement at Williams's demanded terms. The Commission, having found that Williams' conduct was prohibited and unlawful discrimination, however, meant Williams no longer had any incentive to pursue the action as the company could not charge EXCO the "Chesapeake rate" in the event they prevailed over the Commission.[217]

IV. AFTERMATH: THE MORE THINGS CHANGE, THE MORE THEY STAY THE SAME

Meanwhile, the Commission was quick to downplay the controversy. At this time, the commissioners of the Commission were Wayne Christian (Chairman), Ryan Sitton, and Christi Craddick.[218] Commissioner Christian penned an op-ed in USA Today insisting that actually, flaring natural gas "is the safer environmental option."[219] The only alternative in Commissioner Christian's mind was "venting," which is admittedly much worse than flaring.[220] Shutting-in the offending wells, in order to wait for a pipeline warranted scant consideration in light of the fact that doing so "is expensive and time consuming . . . [and] reduces the supply of oil and raises production costs, which leads to higher prices at the gas pump and on the store shelf for products made from crude oil, such as tires, sunglasses and trash bags."[221]

Commissioner Sitton released a report seeking to "put the [flaring] data into context."[222] The commissioners of the mid-1940s focused on the volumes of gas flared versus the volumes of gas produced, boasting that Texas was flaring less than 1% of the volume of gas it was producing.[223] At the time of Commissioner Sitton's report, Texas was flaring twice this ratio,[224] so Mr. Sitton developed a new metric "that relates the amount of gas flared to the amount of oil produced," a figure he refers to as "flaring intensity."[225] By that measurement, Texas was a conservationist ideal—only Saudi Arabia had less "flaring intensity."[226]

Bill Murray was sadly unavailable for comment having passed away in 2004.[227] Others, however, were quick to denounce the report. Gunnar Schade, a professor at Texas A&M University, insisted that the Commission underestimated flaring volumes.[228] Indeed, research by the National Oceanic and Atmospheric Administration (NOAA), utilizing satellite analysis of flares, suggests a gross

underestimation of flaring volumes.**229**

For example, the Commission reports that in 2012, 47.8 Bcf was flared statewide; in 2013, 76.5 Bcf; in 2014, 90.6 Bcf; and in 2015, 114.4 Bcf.**230** The NOAA estimates for those same years are over 125 Bcf in 2012, over 130 Bcf in 2013, over 180 Bcf in 2014, and over 200 Bcf in 2015.**231** If the NOAA estimates are correct, this suggests an enormous under estimate of flaring and thus of waste.**232**

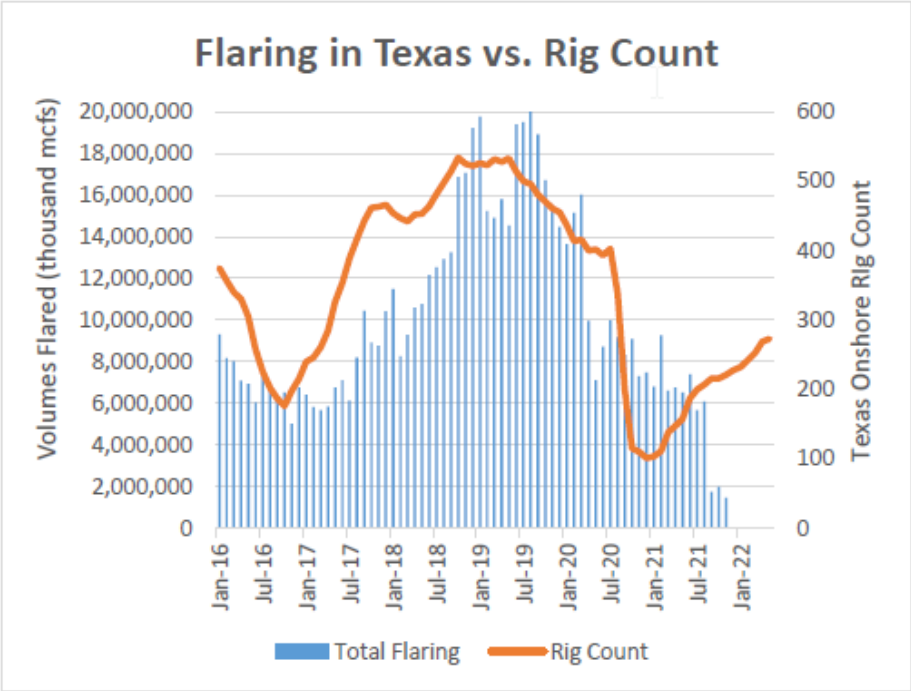
The Commission's flaring website notes that a total of 6,972 flaring exceptions were issued in 2019.**233** As of the date of this writing, the Commission has not updated its website to indicate how many flaring exceptions were issued in 2020 or 2021.**234** The Commission, however, continues to work "[t]o put these numbers in context," noting that Texas has 264,877 producing oil and gas wells, and these numbers make "just a small fraction of the state's oil wells."**235** This context, however, is itself lacking context, as it implies that flaring exceptions are issued on a per-well basis.**236** They are not; each flare permit can cover multiple wells.**237**

The Commission likewise issued a bulletin in July of 2021, highlighting "a positive long-term trend in Texas as the rate of flaring in the state continues to fall."**238** This is accompanied by a colorful graph noting that monthly flaring volumes in Texas had fallen from 19.53 Bcf in June of 2019 to a mere 5.30 Bcf in May of 2021.**239** This also is missing a crucial bit of context in that before 2013, monthly flare volumes above 5 Bcf were virtually unheard of.**240**

V. CONCLUSION

In recent months, the Commission has continued to highlight the ongoing decline in flaring.**241** In the absence of any rule changes or issuing fieldwide orders shutting in flaring wells, one cannot help but wonder if the reduction in flaring is not simply a product of declining oil and gas activity in the state. The table below illustrates the correlation between flaring volumes and rig count since 2016.**242**

(MORE ON FOLLOWING PAGE)



Also relevant to the analysis is the price of natural gas. For instance, 2021 witnessed appreciably higher average monthly prices at Henry Hub than 2019 or 2020.**243** It remains to be seen whether (relatively) lower flaring volumes can survive a ramp-up in drilling activity or whether a return of high oil prices coupled with low natural gas prices will once again generate the kind of economic expediencies that drive producers so often to flare.

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Dori Denney	23
Doris Posthauer	24
Cynthia Lancaster	25
Marie Andrews	26
Steve Watson	26
Armando Lopez	28

AUGUST Birthdays TO YOU

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Jamie Hay	3
Leslie Robinson	7
Katherine Murrell	11
Ed Rielly	12
Ashtyn Fregia	14
Shelley Nguyen	15
Donna Goode	15
Stephanie Nguyen	16
Analisa Garcia	16
Mary Montoya	17
Angela Shockley	18
Nora Marquez	27
Ruth Villarreal	30

September Birthdays

WISH YOU ALL THE BEST

Leola Scott	3
Tiffany Goodrum	5
Jason Mosk	5
Kim Genet	8
Deborah Null	10
Oscar Torres	10
Margaret Lopez	12
Judy Pavlicek	13
Christine Burton	16
Roxane Taho	16
Bobbie Coleman	18
Hailey Young	19
Christie Smith	25
Felicia Hall	25
Debra Heckman	28

October Birthdays

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Kristy Peters	4
Cherie Platt	6
Michelle Phillips	6
Stacy Tanet	8
Nancy Bohne	12
Yuriana Karchut	12
Lauren Meyer	12
Sarah Broyles	12
Courtney Cooper	13
M. Anthony McMorris	13
Carlos Perez	14
Dylan Downing	17
Cassandra McGrath	17
Allison Lammers	18
Sarah Elizabeth Hall	19
Sylvia Rangel	20
Lyndsay Cavanagh	23
Pilar Garcia	23

NOVEMBER

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Sarah Bolen	2
Dellache Brown	3
Melissa Fontana	4
Luanne Johnson	4
Brandon M Kirk	5
Adam Hueske	8
Jason Alexander	10
Erin Parchman	13
Diana Weldon	20
LaTanya Thompson	20
Courtney Mayes	26
Jamie Lowrey	28
Stephanie Moore	28

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Jenna Love (Hazzard)	3
Melissa Dartez	4
Elizabeth Woo	6
Jean Hinton	7
Dominic Howland	8
Kathy Cloud	10
Jennifer Helton	11
Lisa Buffaloe	12
Christina Ratliff	18
Rebekah Jones	20
Sophia McCatharn	22
Damaris Quijano	22
Carmen Keathley	30
Dianna Lara	31