

Matagorda Bay Mitigation Trust

Financial Statements

For the period May 8, 2020 (Inception)
through December 31, 2020

Matagorda Bay Mitigation Trust

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December 31, 2020

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Independent Auditors' Report

To the Trustee of
Matagorda Bay Mitigation Trust

Report on the Financial Statements

We have audited the accompanying financial statements of Matagorda Bay Mitigation Trust, which comprise the statement of net assets as of December 31, 2020 and the related statements of changes in net assets and cash flows for the period May 8, 2020 (Inception) through December 31, 2020, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Matagorda Bay Mitigation Trust as of December 31, 2020 and the changes in its net assets and its cash flows for the period May 8, 2020 (Inception) through December 31, 2020 in accordance with accounting principles generally accepted in the United States of America.



New York, New York
March 24, 2021

Matagorda Bay Mitigation Trust

Statement of Net Assets

December 31, 2020

Assets

Cash and cash equivalents	\$ 9,522,297
Mitigation projects funding receivable	40,000,000
Prepaid insurance	<u>2,860</u>

Total assets	<u>\$ 49,525,157</u>
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Liabilities

Accounts payable	\$ 26,992
Mitigation projects payable	<u>38,440,998</u>

Total liabilities	<u>38,467,990</u>
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Net Assets	<u>\$ 11,057,167</u>
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See notes to financial statements

Matagorda Bay Mitigation Trust

Statement of Changes in Net Assets

For the period May 8, 2020 (Inception) through December 31, 2020

Net Assets, Beginning of Period	\$ -
Increase (Decrease) in Net Assets	
Trust funding	50,000,000
Trust funding, additional mitigation payments	15,000
Mitigation project funds due beneficiaries	(38,440,998)
Mitigation project funds paid to beneficiaries	(309,003)
Trust income (Note 8)	3,929
Trust expenses (Note 8)	<u>(211,761)</u>
Net increase in net assets	<u>11,057,167</u>
Net Assets, End of Period	<u><u>\$ 11,057,167</u></u>

See notes to financial statements

Matagorda Bay Mitigation Trust

Statement of Cash Flows

For the period May 8, 2020 (Inception) through December 31, 2020

Operating Activities

Net change in net assets	\$ 11,057,167
Net change in operating assets and liabilities:	
Increase in prepaid assets	(2,860)
Increase in mitigation projects funding receivable	(40,000,000)
Increase in accounts payable	26,992
Increase in mitigation projects payable	<u>38,440,998</u>
Net cash Used in operating activities	<u>9,522,297</u>
Increase in cash	9,522,297
Cash and Cash Equivalents, Beginning of Period	<u>-</u>
Cash and Cash Equivalents, Ending of Period	<u><u>\$ 9,522,297</u></u>

See notes to financial statements

Matagorda Bay Mitigation Trust

Notes to Financial Statements
December 31, 2020

1. Description of Trust

Establishment of Trust

The Matagorda Bay Mitigation Trust (the Trust) has been established by order of the U.S. District Court for the Southern District of Texas, Victoria Division. On July 31, 2017 a federal Clean Water Act lawsuit was filed by San Antonio Bay Estuarine Waterkeeper and S. Diane Wilson, (Plaintiffs), against Formosa Plastics, Corp., Texas and Formosa Plastics, Corp. U.S.A. (collectively Formosa), alleging illegal discharges from Formosa's plant located in Point Comfort, Texas (Civil Action No. 6:17-CV-47). On June 27, 2019 a declaratory judgement was issued against Formosa for monetary and injunctive relief after which a settlement was reached that included Formosa's commitment to undertake engineering changes, future monitoring, mitigation payments for future infractions and remediation of past discharges. The settlement also provided, by Final Consent Decree dated December 6, 2019, for the establishment of the Trust to be funded by the Defendants in the amount of \$50 million over a five-year period.

In February 2020, Steven J. Raabe, P.E. (the Trustee) was appointed, by agreement of the parties to the suit, to serve as Trustee of the Trust.

The Trust was subsequently formed on May 8, 2020 upon the execution of a Trust Agreement by the Trustee and representatives of the Plaintiffs and Formosa.

The Trustee administers the Trust under the terms of the Trust Agreement, the Consent Decree, and applicable trust law of the State of Texas. Accordingly, the Trustee has broad powers and sole discretion and decision authority in the administration of the irrevocable Trust, which is the exclusive holder of the trust assets and accounts.

The Trust is classified as a Qualified Settlement Fund for which the Trustee serves as Administrator.

The mission of the Matagorda Bay Mitigation Trust is to support and fund environmental mitigation projects, studies and initiatives in the Matagorda Bay and San Antonio Bay ecosystems and other purposes allowed under the Consent Decree.

The Trust carries out its stated mission and purpose through the implementation of five specific projects defined in the Consent Decree and Trust Agreement, and through an array of additional projects to be developed by the Trust through a public Request for Proposals process.

The Consent Decree and the Trust Agreement define five specific projects for the Trust to carry out (one of which does not begin until 2021). Each such project, by Decree, has its specific budget allocation and, in Fiscal Year 2020, the total of these five projects was \$5,300,000. Inasmuch as these amounts are earmarked specifically for these defined "beneficiaries" of Trust funds, the entire amount is recorded as a liability entitled Mitigation Projects Payable. This liability is reduced by interim project payments made to such beneficiaries.

The balance of the funds received each year are used for the additional environment research and mitigation projects to be developed by the Trust through a public Request for Proposals process and for Trust administration expenses.

Matagorda Bay Mitigation Trust

Notes to Financial Statements

December 31, 2020

Funding of Trust

The Trust is funded with Mitigation Trust Payments according to the terms of the Consent Decree. Formosa is required to tender five equal annual payments of \$10,000,000 over a five year period for total funding of \$50,000,000. Formosa tendered their first annual payment, in compliance with the Consent Decree and under the terms of the Trust Agreement, on May 19, 2020 in the stipulated amount of \$10,000,000. Subsequent annual payments by Formosa are due no later than May 26 of each year through 2024. This future funding is shown as mitigation projects funding receivable on the statement of net assets.

2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America (US GAAP).

The accompanying financial statements present the Trust's changes in net assets for the period May 8, 2020 (Inception) through December 31, 2020. The Trust's normal fiscal period is a calendar year ended December 31.

Cash and Cash Equivalents

The Trust maintains its cash deposits with financial institutions. All highly-liquid investments with an original maturity of three months or less at the date of purchase are considered to be cash equivalents including all money markets and mutual funds. At times, a portion of the cash and cash equivalents may exceed the Federal Deposit Insurance Corporation (FDIC) insurance limits. At December 31, 2020, all of the Trust's cash and cash equivalents were held at Falls City National Bank and Sendero Wealth Management.

Mitigation Projects Payable

This represents funds due to beneficiaries for projects specifically defined by the Consent Decree and Trust Agreement as well as the additional projects to be developed by the Trust through a public Request for Proposals process.

Fiduciary Net Position

Represents the net discretionary funds available to the Trustee for other environmental and mitigation projects as well as funds for administration and expenses of the Trust. This amount of \$11,057,167 at December 31, 2020 is represented as Net Assets.

Income Taxes

Under the terms of the Matagorda Bay Mitigation Trust Agreement, the Trust will qualify as, and remain, a "Qualified Settlement Fund" within the meaning of § 468B of the Internal Revenue Code, 26 U.S.C. § 468B and the Regulations promulgated thereto and codified at 26 C.F.R. §§ 1.468B-1 through 1.468B-5. Transferor shall be classified as a "transferor" within the meaning of Regulation § 1.468B-1(d)(1), 26 C.F.R. § 1.468B-1(d)(1). The Trustee shall be classified as the "administrator" within the meaning of Regulation § 1.468B-2(k)(3), 26 C.F.R. § 1.468B-2(k)(3). Accordingly, if appropriate, the Trustee shall elect to apply settlement fund rules by filing a "§ 1.468B-5(b)(2) Election."

Matagorda Bay Mitigation Trust

Notes to Financial Statements

December 31, 2020

It is further intended that all transfers to the Trust will satisfy the "all events test" and the "economic performance" requirements of § 461(h)(1) of the Internal Revenue Code, 26 U.S.C. § 461(h)(1), and Regulation § 1.461-1(a)(2). 26 C.F.R. § 1.461-1(a)(2). As such, the Transferor shall not be taxed on the income of the Trust. The Trust shall be taxed on its modified gross income, excluding the sums, or cash equivalents of things, transferred to it. In computing the Trust's modified gross income, deductions shall be allowed or, inter alia, administrative costs and other incidental deductible expenses incurred in connection with the operation of Trust, including, without limitation, state and local taxes and legal, accounting and actuarial fees relating to the operation of the Trust. All such computations of the Trust's modified gross income, as well as any exclusions or deductions thereto, shall be compliant and consistent with Treasury Regulation § 1.468B-2(b)(1)-(4), 26 C.F.R. § 1.468B-2(b)(1)-(4).

The Matagorda Bay Mitigation Trust, whose beneficiaries are comprised only of governmental entities and organizations that qualify as nonprofit under the IRS Code, is required to file, by April 15 of each year, Form 1120-SF (U.S. Income Tax Return for Settlement Funds). Accordingly, the Trust shall pay applicable taxes, if any, with respect to the Trust in a manner consistent with the provisions of applicable law. For the period May 8, 2020 (Inception) through December 31, 2020 no taxes were due and no tax asset or liability existed.

Use of Estimates in Financial Statements

The preparation of the financial statements in conformity with accounting principles generally accepted in the United States of America may require the Trustee to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Recent Accounting Pronouncements

The Trust has assessed recent accounting pronouncements and determined that there are none that would be expected to have a material impact on the financial statements.

3. Cash and Cash Equivalents

As of December 31, 2020, cash and cash equivalents were comprised of the following:

Cash	\$	15,857
Money market		222,738
Money market fund		<u>9,283,702</u>
Total cash and cash equivalents	\$	<u><u>9,522,297</u></u>

Matagorda Bay Mitigation Trust

Notes to Financial Statements

December 31, 2020

4. Fair Value Measurement

Accounting standards require certain assets and liabilities be reported at fair value in the financial statements and provide a framework for establishing that fair value. The framework for determining fair value is based on a hierarchy that prioritizes the inputs and valuation techniques used to measure fair value. The Trust's Cash Equivalents are presented as provided by this hierarchy.

Level 1 - In general, fair values determined by Level 1 inputs use quoted prices in active markets for identical assets and liabilities that the Trust has the ability to access.

Level 2 - Fair values determined by Level 2 inputs use other inputs that are observable, either directly or indirectly. These Level 2 inputs include quoted prices for similar assets or liabilities in active markets and other inputs such as interest rates and yield curves that are observable at commonly quoted intervals. The Trust had no assets or liabilities that are measured with Level 2 inputs at December 31, 2020.

Level 3 - Level 3 inputs are unobservable inputs, including inputs that are available in situations where there is little, if any, market activity for the related asset or liability. These Level 3 fair value measurements are based primarily on management's own estimates using pricing models, discounted cash flow methodologies, or similar techniques taking into account the characteristics of the asset or liability. The Trust had no assets or liabilities that are measured with Level 3 inputs at December 31, 2020.

In instances where inputs used to measure fair value fall into different levels in the above fair value hierarchy, fair value measurements in their entirety are categorized based on the lowest level input that is significant to the valuation. The Trust's assessment of the significance of particular inputs to these fair value measurements requires judgment and considers factors specific to each asset or liability.

The following table presents information about the Trust's assets measured at fair value at December 31, 2020 and the valuation techniques used by the Trust to determine those fair values.

	December 31, 2020			
	Level 1	Level 2	Level 3	Total
Assets:				
Cash equivalents:				
Money market	\$ 222,738	\$ -	\$ -	\$ 222,738
Money market fund	9,283,702	-	-	9,283,702
Total	<u>\$ 9,506,440</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 9,506,440</u>

The following are description of the valuation methodologies used for asset measured at fair value.

Due to their short-term liquid nature, the fair value of cash equivalents approximates carrying value.

The Trust's policy is to recognize transfers between levels of the fair value hierarchy as of the actual date of the event of change in circumstances that caused the transfer. There were no such transfers during the period May 8, 2020 (inception) through December 31, 2020.

Matagorda Bay Mitigation Trust

Notes to Financial Statements

December 31, 2020

5. Mitigation Project Payable

The following are defined projects in the Consent Decree and Trust Agreement. The Trust made distributions for three projects in 2020, as stipulated. Amounts are paid out for each respective contracts when qualifying expenses are submitted and approved by the Trust for distribution to the beneficiary. Accordingly, at December 31, 2020 the Trust had outstanding contracts as follows:

	<u>Total Funding of Over Life of Consent Decree</u>	<u>2020 Funding Allocation</u>	<u>Approved and Paid Amount of 2020 Allocation</u>	<u>Unpaid Balance of Total Funding</u>
Beneficiary:				
Federation of Southern Cooperatives	\$ 20,000,000	\$ 3,000,000	\$ 186,215	\$ 19,813,785
Green Lake Park	10,000,000	2,000,000	-	10,000,000
Port Lavaca YMCA	750,000	100,000	82,052	667,948
University of Texas Marine Science Inst.	1,000,000	200,000	40,735	959,265
Calhoun County Environmental Research Mitigation Projects	2,000,000	-	-	2,000,000
	5,000,000	1,000,000	-	5,000,000
Total	<u>\$ 38,750,000</u>	<u>\$ 6,300,000</u>	<u>\$ 309,002</u>	<u>\$ 38,440,998</u>

The Matagorda Bay Mitigation Trust is allocated a total of \$11,250,000 from the consent decree to cover expenses of the Trust and to award funds for the benefit of the waterbodies and public. Expenses approved on an annual basis based on a proposed budget by the Trustee. The balance of this amount is reflected in Net Assets at December 31, 2020.

Any additional Mitigation Payments due from Formosa as a result of Consent Decree violations (as defined) will be allocated to the Trust to award funds for the benefit of the waterbodies and public. For the year ended December 31, 2020 this amounted to \$15,000.

6. Related-Party Transactions

The Trustee was compensated \$58,925 for the year ended December 31, 2020 for services rendered to the Trust.

7. Guarantees and Indemnifications

In the normal course of its operations, the Trust enters into contracts that contain a variety of indemnifications and warranties. The Trust's maximum exposure under this arrangement is unknown as this would involve future claims that may be made against the Trust, which have not yet occurred. However, the Trust has not had prior claims or losses pursuant to these contracts and expects the risk of loss to be remote. No such claims exist or are imminent as of December 31, 2020.

Matagorda Bay Mitigation Trust

Notes to Financial Statements
December 31, 2020

8. Trust Income and Expenses

Trust income and expenses for the period May 8, 2020 (Inception) through December 31, 2020 are comprised of the following:

Income:	
Dividend income - Sendero	\$ 3,854
Interest income - MMDA	81
Interest income - Sendero	14
Realized gain (loss)	<u>(20)</u>
Total income	<u>3,929</u>
Expenses:	
Payroll expense	102,386
Professional fees - legal	58,043
Professional fees - audit	18,000
Investment expense	8,988
Web service/hosting expense	8,857
Professional fees - accounting	8,850
Other expenses	<u>6,637</u>
Total expenses	<u>211,761</u>
Trust net income and expenses	<u>\$ (207,832)</u>

9. Subsequent Events

The Trustee has evaluated subsequent events to determine if events or transactions occurring through March 24, 2021, the date which the financial statements were available to be issued, require potential adjustment to or disclosure in the financial statements. There were no events or transactions occurring during the subsequent event reporting period which require recognition or disclosure in the financial statements besides for the following:

Subsequent to December 31, 2020, additional contracts were entered into as a result of the Request for Proposals process publicly announced on October 30, 2020. Thirty-nine (39) proposals were received and through a defined evaluation process undertaken by an independent Award Committee, nine projects were selected for funding. Additionally, under the terms of the Consent Decree and Trust Agreement, the Trustee selected two additional projects for funding.

Matagorda Bay Mitigation Trust

Notes to Financial Statements

December 31, 2020

Below is a table of contracts awarded subsequent to December 31, 2020 as of March 24, 2021.

Contracted Entity	Contract Amount	Contract Status
Habitat Restoration:		
Coastal Bend Bay & Estuaries (Blackjack)	\$ 500,000	Awarded/Executed
Coastal Bend Bay & Estuaries (West Marsh)	498,000	Awarded/Executed
Matagorda Bay Foundation (Schicke Point)	500,000	Awarded/Executed
Environmental Research:		
Texas A&M Corpus Christi (Conkle)	499,917	Awarded/Executed
Texas A&M Corpus Christi (Montagna)	159,055	Awarded/Executed
Texas A&M Corpus Christi (Stunz)	495,991	Awarded/Executed
Texas A&M Corpus Christi (Wetz)	478,822	Awarded/Executed
Texas A&M Galveston	499,953	Awarded
University of Texas	499,805	Awarded
Public Education:		
Calhoun County 4H Sportfishing Club	51,500	Awarded/Executed
Improving Public Access:		
Matagorda Bay Foundation (Wetland/Dune Acquisition)	22,000	Awarded/Executed
Total	<u>\$ 4,205,043</u>	