



MATAGORDA BAY MITIGATION TRUST

Steven J. Raabe, P.E., Trustee

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TRUSTEE'S ANNUAL REPORT FOR 2022

Formation (Consent Decree Paragraphs 51-54)

The Matagorda Bay Mitigation Trust (Trust) was created as a result of the settlement of a Clean Water Act lawsuit, *San Antonio Bay Estuarine Waterkeeper and S. Diane Wilson, vs. Formosa Plastics Corp., Texas and Formosa Plastics Corp., U.S.A.*, in the United States District Court for the Southern District of Texas, Victoria Division (“Consent Decree”). The settlement called for, among other things, the establishment of the Matagorda Bay Mitigation Trust with funding provided by Formosa in the amount of \$50 million over a five-year period. The final Consent Decree was filed with the United State District Court for the Southern District of Texas, Victoria Division on December 6, 2019.

In accordance with Paragraph 52 of the Consent Decree, the Parties to the lawsuit jointly agreed to appoint Steven J. Raabe, P.E. as Trustee for the Trust in February 2020.

The Trustee developed a Trust Agreement which prescribes in greater detail the administration of the Trust, role and responsibilities of the Trustee, and the management and distribution of funds paid by Formosa for mitigation projects. The Parties to the lawsuit executed the Trust Agreement on May 8, 2020 which formally established the Trust, whose EIN is 84-7112993. The Trust is classified as a Qualified Settlement Fund for which the Trustee serves as Administrator.

The Consent Decree required Formosa to make the first payment of mitigation funds to the Trust within 14 days of the establishment of the Trust. The first \$10 million payment was received by the Trust on May 19, 2020. The Consent Decree specifies that Formosa’s subsequent annual payments to the Trust are due within one week of the anniversary of the first payment which is May 26 of each year through 2024. The second \$10 million payment was received by the Trust on May 10, 2021. The third \$10 million payment was received by the Trust on May 10, 2022.

The Consent Decree and the Trust Agreement provide that the Trustee shall send an annual report to the Parties to the lawsuit, of which this report is the third, and make the report publicly available. With the end of the third fiscal year of the Trust, this annual report, along with the audited financial statements for the Trust's fiscal year ending December 31, 2022, is posted on the Trust's website at www.mbmTrust.com.

Administration (Consent Decree Paragraphs 53-54, Trust Agreement)

As noted above, the Trust Agreement executed by the Parties to the lawsuit established the Trust which allowed the Trustee to begin developing and instituting the required processes, procedures and contractual relationships to administer the Trust and the funds paid to the Trust by Formosa. The Trust has contracted with professionals for the following services: operations administration, legal, bookkeeping, audit, insurance, funds management, and website design and hosting.

The Trustee developed a budget for the administrative costs for 2022 in accordance with Section 2.5.3 of the Trust Agreement and it is included as Attachment A to this report. Actual expenditures were 15.02% under budget and were 1.34% when compared to the total monies received.

Additional mitigation payments were made to, or accrued by, the Trust in 2022 pursuant to Paragraph 36 of the Consent Decree, in the amount of \$5,810,000.00.

The financial statements of the Trust were audited by the independent public accounting and consulting firm of Baker Tilly, LLP, headquartered in Chicago, IL. The result of the audit of the Trust's 2022 operations and financial statements was an unqualified opinion. This means that the Trust's financial statements and supporting documentation fairly represents the financial position of the Trust.

The Trust's mission statement 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.

Environmental Mitigation Projects (Consent Decree Paragraphs 56-62)

Since inception, the Trust has made awards and/or contracts totaling \$17,021,698.63, of which \$6,433,463.00 was in the 2022 funding cycle. These mitigation projects are described in more detail below.

Matagorda Bay Cooperative Development Project (Consent Decree Paragraph 56)

The purpose of this mitigation project is to form a Matagorda Bay Fishing Cooperative and netting or transportation cooperatives, if necessary, to support the Fishing Cooperative.

The Trust executed no-cost contract extensions with the Federation of Southern Cooperatives for the \$372,433.00 planning study to continue an assessment of the communities, conditions,

resources and obstacles on the ground in Calhoun, Matagorda and surrounding counties, relative to the development of a fishing cooperative(s) and affiliated enterprises. While progress of the outreach to, and organization of, the fishing community that could participate in the fishing cooperative has been slow, the Federation was successful in organizing the local fishermen's interaction with the Texas Parks and Wildlife Department (TPWD) regarding the potential closure of oyster reefs in San Antonio and Matagorda Bays to the extent that TPWD delayed making any decisions regarding those closures. TPWD ultimately issued closures for many oyster reefs in the Bay Systems which caused the efforts to develop the fishing cooperative to consider implementing mariculture operations in addition to harvesting of wild seafood. A steering committee of interested fishermen has been established to work with the Federation in the development of the fishing cooperative. The Federation contracted with Candor Seafood to conduct a feasibility analysis and develop a business plan regarding the fishing cooperative. The Federation is evaluating options for the construction or acquisition of processing and dock facilities for the fishing cooperative. The Federation is currently developing the articles of incorporation and bylaws for the fishing cooperative and plans to formally establish the fishing cooperative in early summer of 2023.

Receiving timely activity and expenditure reports continues to be a challenge in monitoring progress. Of the \$11 million the Trust has received to date for the Matagorda Bay Cooperative Development project, \$372,433 has been expended by the Federation as of the end of 2022.

Green Lake Park (Consent Decree Paragraph 57)

The purpose of this mitigation project is for the development, protection, operation and maintenance of Green Lake Park owned by Calhoun County.

The Trust executed a contract in 2020 with Calhoun County in the amount of \$2,000,000.00 for the design and repair of a breach in the Green Lake shoreline that is causing seepage from Green Lake into adjacent waters. Wet weather in the late spring and summer of 2021 hampered the acquisition aerial topographic surveys due to flooding in the Guadalupe Delta and around Green Lake. The surveys were completed in the fall of 2021 and the engineering feasibility analysis and site selection for the breach repair was completed in early 2022. The project is currently undergoing environmental permitting review. Final engineering and construction are scheduled to be complete by 2024.

The Trust executed a contract in 2021 with Calhoun County in the amount of \$5,000.00 for the preliminary engineering phase of the Green Lake Park Development project. The preliminary engineering phase was completed by March 31, 2022 and resulted in updated cost estimates and a phasing plan for the park improvements.

The Trust executed a contract in 2022 with Calhoun County in the amount of \$260,000.00 for engineering services for the design and construction administration of the Phase 1 improvements for the Green Lake Park Development project. The Phase 1 improvements are scheduled to be completed by December 2024.

Calhoun County YMCA Summer STEM Program (Consent Decree Paragraph 58)

The purpose of this mitigation project is to fund camps for children and teenagers in the Matagorda and San Antonio Bay area, which will be focused on education about how to be a good steward of the local ecosystems, will teach outdoor education, and provide recreation activities.

The Trust executed a contract amendment with the Calhoun County YMCA in the amount of \$150,000.00 for the 2022 summer STEM program. The educational activities for the youth participants in the 2022 summer STEM program concluded in August 2022. Over 185 youth participated in the program. A final report of the results of the 2022 Summer STEM program is located on the Trust's website at <https://www.mbmtrust.com/media/wvibogeb/mbmt-ymca-001-final-report-2022.pdf>.

Magnolia Beach Erosion Control and Beach Restoration (Consent Decree Paragraph 59)

The purpose of this mitigation project is for erosion control and beach restoration at Magnolia Beach. Funds may be used for purchase and use of clean and uncontaminated fill material, planting of native plants, necessary construction to prevent future erosion, and necessary maintenance to prevent beach erosion.

All the funding for this mitigation project became available in 2022. Calhoun County is in the process of procuring an engineering consultant to design the project. The Trust will contract with Calhoun County to complete this project once Calhoun County finalizes discussions with other funding partners to leverage the Trust's funding and a scope of work has been developed.

University of Texas Marine Science Institute Nurdle Patrol (Consent Decree Paragraph 60)

The purpose of this mitigation project is for environmental quality assessment and environmental education, specifically to support the Nurdle Patrol and environmental conferences.

The final report documenting the second year's activities is located on the Trust's website at <https://www.mbmtrust.com/media/nyobflw4/mbmt-utmsi-002-y2final-report-6-22.pdf>.

The Trust executed a contract amendment with the University of Texas Marine Science Institute in the amount of \$200,000.00 for the third year's activities which are scheduled to conclude on May 31, 2023.

Environmental Research Mitigation Project (Consent Decree Paragraph 61)

The purpose of this mitigation project is to provide funding for environmental research regarding the Matagorda and San Antonio Bay Systems, or the river deltas in Calhoun or Jackson Counties feeding into those systems. Funding may be distributed for environmental research topics, including but not limited to, the ecology, pollution, fisheries, or habitat and wildlife restoration of the ecosystems.

The Trustee was charged by Consent Decree Paragraph 61 to establish a system to provide funding for research, including providing public notice of the funding opportunity and setting up a review process for applications with researchers in applicable fields. The Trustee felt it was in the best interests of the Trust to solicit and award Paragraph 61 proposals in conjunction with the process utilizing the Award Committee specified in Consent Decree Paragraph 62. The Trustee issued a request for proposals on September 1, 2022 soliciting proposals for the 2022 funding cycle. The Trustee funded two environmental research projects from the submittals received as a result of the request for proposals. They are listed as follows:

- Assessing the risks of lithium pollution on estuarine fishes, University of Texas at Austin Marine Sciences Institute, (\$399,998)
- Assessing multi-trophic impacts of microplastic pollutants across macroinvertebrate food webs in Matagorda Bay, Texas, Tarleton State University, (\$463,382)

Progress reports from Paragraph 61 projects funded in previous funding cycles can be found on the Trust's website at <https://mbmtrust.com/project-summaries/>.

Matagorda Bay Mitigation Trust Mitigation Projects (Consent Decree Paragraph 62)

The purpose of this mitigation project is to research, protect, and restore the water bodies and surrounding ecosystems of the Bay Systems or the river deltas feeding into those systems. The Trust shall award funds for the benefit of these waterbodies and the public, including for:

- providing public education about those waterbodies,
- sponsoring youth camps such as described in paragraph 57 of the Consent Decree;
- purchasing land in the watersheds of those waterbodies for conservation purposes, in order to reduce runoff and other pollution into those waterbodies, and/or to improve public access (physical or visual) to them;
- environmental research of those waterbodies as described in paragraph 59 of the Consent Decree;
- environmental advocacy, except for litigation;
- habitat restoration; and/or
- additional funding for the dedicated Mitigation Projects described in paragraphs 52-57 of the Consent Decree.

The Award Committee, specified in Consent Decree Paragraph 62, established the 2022 funding priorities for proposals. The Trustee issued a request for proposals (RFP) on September 1, 2022 which was publicly advertised. The Trust received 26 proposals. The Award Committee

recommended the award of 13 projects from the submittals received. The projects being funded, by category, are:

Habitat Restoration (Two projects totaling \$771,280)

Oliver Point and Oliver Reef Restoration Project, Matagorda Bay Foundation, (\$271,280)

Matagorda Island Gulf Shoreline Erosion and Pass Cavallo Exchange Restoration, Coastal Bend Bays and Estuaries Program, (\$500,000)

Environmental Research (Seven projects totaling \$3,264,973)

Microplastic Distribution and Impacts to Diamond-backed Terrapin, Highlighting Public Education and Future Effects of Sea-Level Rise, University of Houston – Clear Lake, (\$500,000)

Sediment Quality Assessment Survey of San Antonio Bay, Texas A&M University – Corpus Christi, (\$416,817)

Evaluating photodegradation products of plastic nurdles and their toxicity in Matagorda Bay, University of Texas at Austin Marine Sciences Institute, (\$499,500)

Reproductive and developmental toxicity of “Forever Chemicals” to Matagorda Bay’s prey fishes, University of Texas at Austin Marine Sciences Institute, (\$396,691)

Micro-plastics water column and sediment residence times: quantifying the cycling and flux between bay waters and sediment, and the burial history of micro-plastics within the Matagorda and San Antonio Bay Systems, Texas A&M University – Galveston, (\$499,985)

Sediment mercury concentrations in the Closed Area of Lavaca Bay and the risk to wildlife from mercury remobilization during dredging, Texas State University, (\$497,818)

Assessing the risk to ecosystem health from increasing nitrogen and phosphorus levels in Lavaca Bay, Texas A&M University – Corpus Christi, (\$454,162)

Public Education (One project totaling \$25,811):

Calhoun County Texas A&M AgriLife Extension Service | Texas Sea Grant | Calhoun County 4-H - Public Education, Calhoun County 4H Sportfishing Club, (\$25,811)

Improving Public Access (Two projects totaling \$694,000):

Bulkhead Improvements at Swan Point, Calhoun County, (\$494,000)

Harbor of Refuge Old Landfill Shoreline Erosion Response and Protection - Phase 1 Engineering, City of Port Lavaca, (\$200,000)

Youth Camps (One project totaling \$186,213):

Palacios Summer Day Camp, Calhoun County YMCA, (\$186,213)

Progress reports from Paragraph 62 projects funded in previous funding cycles can be found on the Trust's website at <https://mbmtrust.com/project-summaries/>.

ATTACHMENT A

Matagorda Bay Mitigation Trust

Administrative Costs

Actual vs. Budget – Audited

Fiscal Year Ending 2022

<u>Expense Item</u>	<u>Actual</u>	<u>Budget</u>
Advertising	\$ 816.73	\$ 2,000.00
Award Committees	1,402.00	3,500.00
Bank Fees	950.00	240.00
Compensation – Trustee	68,775.00	90,500.00
Compensation - Operations Administrator	44,207.60	60,500.00
Contract Services	1,000.00	2,400.00
Contributions		1,000.00
Documentarian		
Dues and Subs		300.00
Insurance	5,472.52	5,600.00
Investment Fees	43,405.13	22,000.00
Office Supplies		200.00
Printing/Duplication		300.00
Postage/Shipping	104.42	140.00
Professional Services-Legal	12,650.00	24,600.00
Professional Services-Tax	2,722.50	4,500.00
Professional Service-Accounting	23,057.25	25,000.00
Professional Services-Audit	29,500.00	23,000.00
Professional Services-Other	260.00	6,000.00
Seminars		1,000.00
Telephone/Internet	716.78	750.00
Travel/Mileage	409.75	1,200.00
Webservices/Host	<u>557.92</u>	<u>3,000.00</u>
Total	\$ 236,007.60	\$ 277,730.00
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Under budget by \$41,722.40 = 15.02%