



**MATAGORDA BAY MITIGATION TRUST**

**Steven J. Raabe, P.E., Trustee**

**P.O. Box 1269**

**Poth, Texas 78147-1269**

**[Trustee@mbmTrust.com](mailto:Trustee@mbmTrust.com)**

**[www.mbmTrust.com](http://www.mbmTrust.com)**

## **TRUSTEE'S ANNUAL REPORT FOR 2020**

### **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, In *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 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 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 first, and make the reports

publicly available. With the end of the first fiscal year of the Trust, this annual report along with the audited financial statements for the Trust's fiscal year ending December 31, 2020 are posted on the Trust's website at [www.mbmTrust.com](http://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. Of particular note are the services for operations administration to ensure efficient and effective operations, reliability of financial reporting and compliant internal operations of the Trust. This includes development and execution of appropriate internal controls, business processes and financial procedures to maintain fiscal separation of duties and operational effectiveness.

The Trustee developed a budget for the administrative costs for 2020 in accordance with Section 2.5.3 of the Trust Agreement and it is included as Attachment A to this report. Actual expenditures were 20.1% under budget and were 2.11% when compared to the total monies received.

There was only one occurrence of an additional mitigation payment made to the Trust, pursuant to Paragraph 36 of the Consent Decree, in the amount of \$15,000.

The financial statements of the Trust were audited by the independent public accounting and consulting firm of Baker Tilly Virchow Krause, LLP, headquartered in Chicago, IL. The result of the audit of the Trust's 2020 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 adopted the following mission statement: 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 55-62)**

The Trust has made awards and/or contracts for fifteen mitigation projects totaling \$6,877,475.72. 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 a contract with the Federation of Southern Cooperatives in the amount of \$372,433.00 for a six-month planning study to conduct 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. The final report under this initial contract is due May 20, 2021 along with a scope of work and budget for the implementation phase of the fishing cooperatives project.

#### **Green Lake Park Development (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 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. The project is scheduled to be completed by October 31, 2022.

#### **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 and will teach outdoor education and provide recreation activities.

The Trust executed a contract with the Calhoun County YMCA in the amount of \$100,000.00 for the 2020 summer STEM program. The educational activities for the youth participants in the 2020 summer STEM program concluded in August 2020. Over seventy youth participated in the program. A final report of the results of the 2020 Summer STEM program is located on the Trust's website at <https://www.mbmtrust.com/media/202fbi2d/mbmt-ymca-calhoun-county-final-2020-project-report.pdf> . A video of the 2020 summer STEM program is located at <https://www.youtube.com/watch?v=M0w6XRQU6-4> as well as on the Trust's website.

#### **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.

The funding for this mitigation project will not be available until 2021 so no activities were conducted in 2020. The Trust will contract with Calhoun County to complete this project.

**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 Trust executed a contract with the University of Texas Marine Science Institute in the amount of \$200,000.00 to promote and expand the Nurdle Patrol Program. The first year's activities are scheduled to conclude on May 31, 2021.

**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 October 30, 2020 soliciting proposals. The Trustee funded two environmental research projects from the submittals received as a result of the request for proposals. They are listed as follows:

A research and monitoring program to mitigate the impact of harmful algal blooms on the Matagorda and San Antonio Bays, \$478,822.00, Texas A&M University – Corpus Christi, concluding February 29, 2024.

Colorado River Delta Ecosystem Assessment: Gathering key baseline data to guide future habitat restoration in Matagorda Bay, \$495,991.00, Texas A&M University – Corpus Christi, concluding July 31, 2023.

**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, met to establish the priorities it would seek proposals on and identified four priority areas: public education, improving public access, habitat restoration and environmental research. The Trustee issued a request for proposals on October 30, 2020 soliciting proposals in the four priority areas. The Trust received 39 proposals. The Award Committee recommended the award of nine projects from the submittals received as a result of the request for proposals. The projects being funded, by category, are:

Habitat Restoration (Three projects totaling \$1,498,000)

Protection and Restoration of the Blackjack Peninsula, Aransas National Wildlife Refuge, \$500,000, Coastal Bend Bays & Estuaries Program, concluding December 31, 2023.

Protection and Restoration of Matagorda Island West Marsh, Aransas National Wildlife Refuge, \$498,000, Coastal Bend Bays & Estuaries Program, concluding December 31, 2022.

Schicke Point Living Shoreline Restoration, \$500,000, Matagorda Bay Foundation, concluding May 30, 2022.

Environmental Research (Four projects totaling \$1,658,730)

The fate and toxicity of microplastics and persistent pollutants in the shellfish and fish of Matagorda Bay, \$499,953, Texas A&M Galveston, concluding August 31, 2024.

Long-term Trends in Lavaca-Colorado and Guadalupe Estuaries, \$159,055, Texas A&M Corpus Christi, concluding December 31, 2022.

Microplastic concentration in sediments and waters of Matagorda and San Antonio Bays: Initial assessment and mitigation plans, \$499,805, University of Texas, concluding May 31, 2024.

Mercury and Plastic in Commercial and Recreational Fisheries in Lavaca, Matagorda, and San Antonio Bays: Risk Assessment and Interaction between the Two Contaminants, \$499,917, Texas A&M Corpus Christi, concluding February 29, 2024.

Public Education (One project totaling \$51,499.72): Coastal Ecology Educational Equipment, Calhoun County AgriLife Extension Service, concluding February 28, 2022.

Improving Public Access (One project totaling \$22,000.00): Wetlands and Dune Habitat Acquisition in Matagorda County, Texas, Matagorda Bay Foundation, concluding May 31, 2022.

**ATTACHMENT A**

**Matagorda Bay Mitigation Trust**

**Administrative Costs**

**Actual vs. Budget – Audited**

**Fiscal Year Ending 2020**

<u>Expense Item</u>	<u>Budget</u>	<u>Actual</u>
Advertising	\$ 8,000.00	\$ 1,131.79
Award Committees	4,200.00	1,225.00
Bank Fees	100.00	80.00
Comp – Trustee	73,225.00	58,925.00
Comp-Ops Admin	48,395.00	43,460.87
Contract Services	15,000.00	730.00
Contributions	500.00	
Documentarian	1,000.00	
Dues and Subs	300.00	
Insurance	5,028.00	2,042.71
Investment Fees	25,000.00	8,987.55
Office Supplies	128.00	27.81
Printing/Duplication	200.00	
Postage/Shipping	193.00	92.55
Professional Services-Legal	52,820.00	53,325.00
Professional Services-Tax	4,718.00	4,717.50
Professional Service-Accounting	8,550.00	8,850.00
Professional Services-Audit	2,000.00	18,000.00
Professional Services-Other	2,100.00	
Seminars	500.00	
Telephone/Internet	292.00	730.60
Travel/Mileage	1,508.00	575.13
Webservices/Host	<u>11,274.00</u>	<u>8,856.75</u>
Total	\$ 265,031.00 =====	\$ 211,758.26 =====

Under budget by \$53,272.74 = 20.1%