



MATAGORDA BAY MITIGATION TRUST

Steven J. Raabe, P.E., Trustee

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TRUSTEE'S ANNUAL REPORT FOR 2021

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 \$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 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 second, and make the reports publicly available. With the end of the second fiscal year of the Trust this annual report, along with the audited financial statements for the Trust's fiscal year ending December 31, 2021, 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 2021 in accordance with Section 2.5.3 of the Trust Agreement and it is included as Attachment A to this report. Actual expenditures were 21.9% under budget and were 1.59% when compared to the total monies received.

Additional mitigation payments were made to, or accrued by, the Trust in 2021 pursuant to Paragraph 36 of the Consent Decree, in the amount of \$3,060,000.00.

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 2021 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 \$7,317,503.72, of which \$3,731,680.00 was in the 2021 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 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. Progress of the outreach to, and organization of, the fishing community that could participate in the fishing cooperative has been slow. The Federation added two local staff in 2021 to accelerate progress on the project. Receiving timely activity and expenditure reports has presented a challenge in monitoring progress. Of the \$7 million the Trust has received to date for the Matagorda Bay Cooperative Development project, only \$186,216 has been expended by the Federation as of the end of 2021. The final report under this initial contract is due October 31, 2022, along with a scope of work and budget for the implementation phase of the fishing cooperatives project.

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 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 is scheduled to be completed by March 31, 2022, and result in updated cost estimates and a phasing plan for the park improvements.

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 will be completed in early 2022. Final engineering and construction are scheduled to be complete 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, will teach outdoor education, and provide recreation activities.

The Trust executed a contract amendment with the Calhoun County YMCA in the amount of \$125,000.00 for the 2021 summer STEM program. The educational activities for the youth participants in the 2021 summer STEM program concluded in August 2021. Over 117 youth participated in the program. A final report of the results of the 2021 Summer STEM program is located on the Trust's website at <https://www.mbmtrust.com/media/i3tearg3/mbmt-ymca-001-summer-report-2021.pdf>. A video of the 2021 summer STEM program is located at https://www.youtube.com/watch?v=D_AKLT0fq5Q 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 became available in 2021. 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.

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 first year's activities is located on the Trust's website at https://www.mbmtrust.com/media/fk3iwnc0/mbmt-utmsi-002-nurdle-patrol-y1_final-report-6-15-21.pdf.

The Trust executed a contract amendment with the University of Texas Marine Science Institute in the amount of \$200,000.00 for the second year's activities which are scheduled to conclude on May 31, 2022.

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, 2021, soliciting proposals for the 2021 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:

Sediment Quality Assessment Survey of Lavaca and Matagorda Bays, \$400,000.00, Texas A&M University – Corpus Christi, concluding on December 31, 2023.

Lavaca Bay Ecosystem Assessment: Gathering key baseline data among nursery habitats spread across a pollution gradient, \$399,776.00, Texas A&M University – Corpus Christi, concluding on August 31, 2024.

The Trust also funded a study on June 1, 2021, to address an immediate research need. That project is listed below:

Matagorda Ship Channel Widening and Deepening Evaluation, \$110,028.00, Texas A&M University – Corpus Christi. The project concluded on September 30, 2021 and the final report is located on the Trust’s website at <https://www.mbmtrust.com/media/mcdcxhjh/mbmt-ship-channel-dredging-evaluation-016-final-report-10-21-21.pdf>.

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 2021 funding priorities for proposals. The Trustee issued a request for proposals (RFP) on September 1, 2021, which was publicly advertised. The Trust received 37 proposals. The Award Committee recommended the award of ten projects from the submittals received. The projects being funded, by category, are:

Habitat Restoration (Five projects totaling \$1,236,129)

Habitat Restoration of the Hog and Schwing Bayou Preserve, Calhoun County, TX, \$115,000, Guadalupe-Blanco River Trust, concluding February 29, 2024.

Coastal Aquatic Plant Nursery and Restoration Outreach, \$265,000, Matagorda Bay Foundation, concluding November 30, 2023.

Enhancing Environmental Response, Conservation, and Education Opportunities in the Matagorda Bay Ecosystem, \$62,000, Matagorda Bay Foundation, concluding August 31, 2022.

Saving the Integrity of Keller Bay and Sand Point Peninsula, \$394,313, Texas A&M AgriLife Research - Texas A&M University, concluding May 31, 2025.

Restoring oyster reef habitat in Tres Palacios Bay and developing best practices for future restoration, \$399,816, Texas A&M University - Corpus Christi, concluding February 28, 2025.

Environmental Research (Two projects totaling \$799,897)

Trophic linkages and habitat connectivity of popular sportfish in the Matagorda Bay system, \$399,932, Texas A&M University – Corpus Christi, concluding February 28, 2025.

Assessing the threat of tire leachate and urban runoff on Matagorda Bay fish populations, \$399,965, University of Texas at Austin Marine Science Institute, concluding May 31, 2025.

Public Education (One project totaling \$223,650)

Coastal Explorers, \$223,650, Calhoun County ISD, concluding May 31, 2025.

Improving Public Access (One project totaling \$141,000.00)

Hog Bayou Park Improvements, \$141,000, Calhoun County, concluding June 30, 2024.

Youth Camps (One project totaling \$91,200)

Matagorda Mañana, \$91,200, Texas Floating Classroom, concluding December 31, 2024.

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 2021

<u>Expense Item</u>	<u>Budget</u>	<u>Actual</u>
Advertising	\$ 2,000.00	\$ 1,373.35
Award Committees	3,000.00	3,707.00
Bank Fees	240.00	370.00
Comp – Trustee	90,250.00	66,075.00
Comp-Ops Admin	72,700.00	42,714.09
Contract Services	2,400.00	620.00
Contributions	1,000.00	.00
Documentarian		
Dues and Subs	300.00	.00
Insurance	5,400.00	5,112.73
Investment Fees	15,000.00	23,314.11
Office Supplies	200.00	.00
Printing/Duplication	300.00	.00
Postage/Shipping	140.00	95.30
Professional Services-Legal	19,250.00	18,176.70
Professional Services-Tax	4,500.00	1,800.00
Professional Service-Accounting	16,800.00	22,912.00
Professional Services-Audit	19,500.00	19,250.00
Professional Services-Other	6,000.00	.00
Seminars	1,000.00	.00
Telephone/Internet	600.00	689.72
Travel/Mileage	1,200.00	313.60
Webservices/Host	<u>3,225.00</u>	<u>552.50</u>
Total	\$ 265,005.00	\$ 207,076.10

Under budget by \$57,928.90 = 21.9%