



**MATAGORDA BAY MITIGATION TRUST**

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

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**TRUSTEE'S ANNUAL REPORT FOR 2023**

**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 fourth \$10 million payment was received by the Trust on May 18, 2023.

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 fourth, and make the report publicly available. With the end of the fourth fiscal year of the Trust, this annual report, along with the audited financial statements for the Trust's fiscal year ending December 31, 2023, is 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.

The Trustee developed a budget for the administrative costs for 2023 in accordance with Section 2.5.3 of the Trust Agreement and it is included as Attachment A to this report. Actual expenditures were 17.1% over budget and were 0.02% when compared to the total monies received in 2023. The overage in the administrative costs compared to the budget was due to increased investment fees, although those were offset by increased investment returns and increases in legal costs due to the review of the formation documents for the Matagorda Bay Fishing Cooperative.

Additional mitigation payments were made to, or accrued by, the Trust in 2023 pursuant to Paragraph 36 of the Consent Decree, in the amount of \$5,160,000.00 representing 173 reported violation events.

The financial statements of the Trust were audited by the independent public accounting and consulting firm of Baker Tilly, LLP, headquartered in New York, NY. The result of the audit of the Trust's 2023 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 \$31,206,116.53, of which \$11,212,528.00 was in the 2023 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 contracts with the Federation of Southern Cooperatives for \$997,545.50 to perform 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 Federation is working with Texas A&M SeaGrant to leverage grant funds provided by Texas A&M SeaGrant to acquire oyster mariculture leases and permits for the fishing cooperative. Texas A&M SeaGrant will also facilitate aquaculture training and apprenticeships so the fishermen can gain experience in the aquaculture industry. The Federation continues to evaluate options for the construction or acquisition of processing and dock facilities for the fishing cooperative. A general assembly of interested fishermen have elected interim directors for the fishing cooperative and are currently finalizing the articles of incorporation and bylaws for the fishing cooperative with plans to formally establish the fishing cooperative in early spring of 2024.

Of the \$15 million the Trust has received to date for the Matagorda Bay Cooperative Development project, \$684,989.26 has been expended by the Federation as of the end of 2023.

### **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. 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 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 Trust executed an amendment in the amount of \$23,250.00 in December 2023 for additional environmental services. 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 2023 summer STEM program. The educational activities for the youth participants in the 2023 summer STEM program concluded in August 2023. Over 242 youth participated in the program. A final report of the results of the 2023 Summer STEM program is located on the Trust's website at <https://www.mbmtrust.com/media/qq3bqhio/mbmt-ymca-001-am-3-and-4-final-report-11-15-23.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 has procured an engineering consultant to design the project. The Trust entered into a contract with Calhoun County on November 18, 2023 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 final report documenting the third year's activities is located on the Trust's website at <https://www.mbmtrust.com/media/w5khiwfx/mbmt-utmsi-002-y3-final-report-6-23.pdf> .

The Trust executed a contract amendment with the University of Texas Marine Science Institute in the amount of \$200,000.00 for the fourth year's activities which are scheduled to conclude on May 31, 2024.

#### **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, 2023 soliciting proposals for the 2023

funding cycle. The Trustee funded three environmental research projects from the submittals received as a result of the request for proposals totaling \$1,271,027. They are listed as follows:

- Evaluating Ecological & Human Health Risk of PFAS in Matagorda Bay, University of Texas at Austin Marine Sciences Institute, (\$499,651)
- Relating variation in freshwater inflow and water quality to biological communities in the Colorado River Delta to inform future habitat restoration projects, Texas A&M University - Corpus Christi, (\$294,190)
- Assessment of PFAS concentrations and loadings in the Lavaca Bay watershed, Texas A&M Agrilife Research, (\$477,186)

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 2023 funding priorities for proposals. The Trustee issued a request for proposals (RFP) on September 1, 2023 which was publicly advertised. The Trust received 39 proposals. The Award Committee recommended the award of 26 projects from the submittals received. The projects being funded, by category, are:

Habitat Restoration (Six projects totaling \$945,940)

Derelict Crab Trap Removal Project: Texas Mid-Coast, \$25,000, San Antonio Bay Partnership

Community Engagement to Reduce Abandoned Crab Traps: Texas Mid-Coast, \$50,000, San Antonio Bay Partnership

Carancahua Bay Community Reef Restoration – Phase I, \$55,940, Matagorda Bay Foundation

Protection and Restoration of Matagorda Island West Marsh, Aransas National Wildlife Refuge – Phase II, \$200,000, Coastal Bend Bays and Estuaries Program

Marine Debris Removal on Matagorda Island, \$500,000, Coastal Bend Bays and Estuaries Program

Aransas NWR Habitat Restoration, \$115,000, Texas RICE

Environmental Research (Seven projects totaling \$2,608,601)

Mid-Coast Sea Turtle Rescue Program, \$14,280, San Antonio Bay Partnership

Matagorda Bay Benthic Habitat Mapping and Assessment, \$489,950, Matagorda Bay Foundation

Mercury exposure through seafood consumption in the Matagorda Bay system: human health study and public education, \$474,900, Texas State University

Resuspension of contaminants in the Matagorda Bay due to storms, ship traffic, and dredging activities, \$433,113, University of Texas at Austin Marine Science Institute

Are benefits of freshwater inflow confounded with degradation by non-point source pollution in Lavaca and Matagorda Bays?, \$411,853, Texas A&M University – Corpus Christi

Nurdle Count – A machine learning approach to nurdle classification and quantification, \$284,505, Texas A&M University – Corpus Christi Conrad Blucher Institute

MIRROR: a Microplastic Raman Optical Rover to Understand Microplastics Variability Along Beaches of Matagorda Peninsula, \$500,000, University of Texas at Austin

Public Education (One project totaling \$15,525):

Matagorda County Texas A&M AgriLife Extension Service | Texas Sea Grant | Matagorda County 4-H - Public Education, \$15,525, Matagorda County 4H Adult Leaders Club

Improving Public Access (Seven projects totaling \$6,311,000):

City of Port Lavaca Downtown Waterfront Public Access Improvements, \$400,000, City of Port Lavaca

Bill Sanders Memorial Park Pavilion and Shade Canopy, \$319,000, Calhoun County

Shoreline Preservation and Public Access Improvement to Lavaca River at FM 616 in Lolita, Texas, \$500,000, Jackson County

Matagorda Beach Public Access Improvements, \$395,000, Matagorda County

Matagorda Bay Clean Water Project, \$497,000, City of Palacios

Shoreline Protection and Restoration at Olivia Haterius County Park, \$2,100,000, Calhoun County

Boggy Nature Park Shoreline Stabilization, \$2,100,000, Calhoun County

Environmental Advocacy (One project totaling \$36,000):

San Antonio & Espiritu Bay Shoreline Plastics Debris Clean-Up & Reduction, \$36,000, San Antonio Bay Partnership

Youth Camps (One project totaling \$24,435):

Connecting Youth to Matagorda Bay Using Art and Literature – Creating a More Resilient Coast Through Youth Advocacy and Conservation, \$24,435, Matagorda Bay Foundation

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/>.

**Awards and Recognitions**

The Trust received the inaugural Community Champion Award from the YMCA of the Golden Crescent at its annual meeting on February 23, 2023 for the Trust's funding and support of the Calhoun County YMCA Summer Stem Program.

Trust was recognized as a Friend of the Calhoun County 4H program at the Calhoun County 4H Achievement Banquet on July 30, 2023 for the Trust's funding and support of environmental education equipment through the Calhoun County 4H Sportfishing Club.

**ATTACHMENT A**

**Matagorda Bay Mitigation Trust**

**Administrative Costs**

**Actual vs. Budget – Audited**

**Fiscal Year Ending 2023**

<u>Expense Item</u>	<u>Actual</u>	<u>Budget</u>
Advertising	\$ 1,105.00	\$ 2,000.00
Award Committees	1,862.00	3,500.00
Bank Fees	600.00	240.00
Compensation – Trustee	83,300.00	85,600.00
Compensation - Operations Administrator	53,092.22	56,500.00
Contract Services		2,400.00
Contributions		1,000.00
Dues and Subs		300.00
Insurance	8,628.38	6,000.00
Investment Fees	61,992.36	41,000.00
Office Supplies		200.00
Printing/Duplication		300.00
Postage/Shipping	285.49	140.00
Professional Services-Legal	66,152.00	23,000.00
Professional Services-Tax		4,500.00
Professional Service-Accounting	32,020.12	24,000.00
Professional Services-Audit	31,980.00	30,500.00
Professional Services-Other		6,000.00
Seminars		1,000.00
Telephone/Internet	550.08	780.00
Travel/Mileage	1,001.13	1,200.00
Webservices/Host	<u>842.36</u>	<u>3,000.00</u>
TOTAL	<u>\$ 343,412.14</u>	<u>\$ 293,160.00</u>

Over budget by \$50,252.14 = 17.1%