

San Geronio Pass Water Agency

DATE: February 13, 2023
TO: Board of Directors
FROM: Legal Counsel
SUBJECT: ELECTRONIC SIGNATURE USE POLICY

RECOMMENDATION

Adopt Resolution 2023-03, Electronic Signature Use Policy.

BACKGROUND

Electronic signatures are allowed by State law in place of traditional wet-ink signatures for official public agency documents under the California Uniform Electronic Transactions Act (Civil Code Section 1633.1 *et seq.*) and Government Code section 16.5. Wet-ink signatures are still required where mandated by State law, such as most documents intended for recordation.

While State law allows the use of electronic signatures, it does not require it. Therefore, even if the Board approves the proposed Resolution, the Agency can always elect to use traditional wet-ink signatures. California Secretary of State regulations outline acceptable types of digital signature technology. Various digital signature platforms, referred to as “certification authorities,” are available including, by way of example only, DocuSign.

ANALYSIS

Staff believes that allowing the use of electronic signatures would benefit the Agency in several ways including, but not limited to, the following:

1. The Board recently designated a Board member as the Secretary of the Board and that position requires the execution of a number of documents on a regular basis. The use of an electronic signature will help expedite the execution of official documents without the need for the Board Secretary to make frequent visits to the Agency offices.
2. The use of electronic signatures will be more convenient for the public and reduce in-person contact in those situations where social distancing, or other restrictions, may be in effect in the future.
3. Electronic signatures can improve efficiency by streamlining document review, removing the need to scan documents and reducing Staff time required to transfer, store, and archive physical documents.

The proposed Resolution would adopt an Electronic Signature Use Policy (“Policy”) for the Agency. The Policy would allow the use of electronic or digital signatures. By way of background, an example of an electronic signature includes a scanned image of a

handwritten signature. By contrast, a digital signature is often a computer generated signature, such as one generated by DocuSign, and where the signature is linked to the content of a digital document using encryption.

As explained in the Policy, day-to-day decisions regarding technologies, vendors and types of signatures are left to the General Manager.

FISCAL IMPACT

The use of electronic signatures could save time and resources involved in getting documents signed and could result in cost efficiencies regarding the generation and storage of documents.

ACTION

Adopt Resolution 2023-03, Electronic Signature Use Policy.

ATTACHMENTS

Resolution 2023-03
Electronic Signature Use Policy

RESOLUTION NO. 2023-03

A RESOLUTION OF THE SAN GORGONIO PASS WATER AGENCY ENACTING AN ELECTRONIC SIGNATURE USE POLICY

WHEREAS, the San Gorgonio Pass Water Agency (“Agency”) is a wholesale water agency formed under the San Gorgonio Pass Water Agency Law set forth in Water Code Appendix 101 (“Law”); and

WHEREAS, the use of electronic signatures is allowed by California’s Uniform Electronic Transactions Act (Civ. Code, §§ 1633.1 *et seq.*) and Government Code section 16.5 in the place of wet-ink signatures for official public agency documents, with limited exceptions; and

WHEREAS, the Board recently designated a Board member as the Secretary of the Board and that position requires the execution of a number of documents on a regular basis. The use of an electronic signature will help expedite the execution of official documents without the need for the Board Secretary to make frequent visits to the Agency offices; and

WHEREAS, the use of electronic signatures will be more convenient for the public and reduce in-person contact in those situations where social distancing, or other restrictions, may be in effect in the future; and

WHEREAS, electronic signatures can improve efficiency by streamlining document review, removing the need to scan documents and reducing Staff time required to transfer, store, and archive physical documents; and .

WHEREAS, the use of electronic signatures is also in the public interest as it will reduce the unnecessary use of paper and ink, streamline document review, and reduce the inefficient transfer of physical documents.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SAN GORGONIO PASS WATER AGENCY AS FOLLOWS:

1. Incorporation Of Recitals The Recitals set forth above are incorporated herein and made an operative part of this Resolution.
2. Adoption of Policy The Board of Directors hereby adopts the Electronic Signature Use Policy attached hereto as Attachment A and incorporated herein by reference.
3. Effective Date The President of the Board shall sign this Resolution and the Secretary of the Board shall attest thereto, and this Resolution shall be in full force and effect immediately upon adoption.
4. Severability If any section, subsection, clause or phrase in this Resolution is for any reason held invalid, the validity of the remainder of this Resolution shall not be affected thereby. The Board hereby declares that it would have passed this Resolution and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases or the application thereof be held invalid.

ADOPTED AND APPROVED this 13th day of February, 2023.

President, Board of Directors
San Geronio Pass Water Agency

ATTEST:

Secretary, Board of Directors
San Geronio Pass Water Agency

ELECTRONIC SIGNATURE USE POLICY

(attached behind this page)

SAN GORGONIO PASS WATER AGENCY

ELECTRONIC SIGNATURE USE POLICY

Adopted February 13, 2023

I. Purpose

By adopting this Electronic Signature Use Policy (“Policy”), the San Gorgonio Pass Water Agency (“Agency”) seeks to implement guidelines for the use and acceptance of electronic signatures to conduct official Agency business. This Policy allows the use of electronic signatures in lieu of manual signatures, when permitted by law, and establishes when an electronic signature may replace a manual signature.

II. Legal Background

California has adopted statutes regulating the use of electronic signatures including the Uniform Electronic Transactions Act (“UETA”) (Cal. Civil Code § 1633.1 *et seq.*) and California Government Code section 16.5. This Policy is intended to comply with all applicable laws and regulations including, without limitation, the aforementioned statutes. To the extent that any procedure or guideline under this Policy conflicts with applicable law, all persons subject to this Policy are required to comply with the requirements of the applicable law(s).

III. Definitions

A. “Approved List of Digital Signature Certification Authorities” means the list of certification authorities approved by the California Secretary of State to issue certification for digital signature transactions involving public entities in California.

B. “Digital signature” means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature. A digital signature is a type of “electronic signature.”

C. “Electronic record” means a record, file, or document created, generated, sent, communicated, received, or stored by electronic means. An electronic record generally contains information or a data file that was created and stored in digitized form through the use of computers, machines, and software applications.

D. “Electronic signature” means an electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record. For purposes of this Policy, a digital signature is a type of electronic signature.

E. “External document” means any document generated by or required to be signed by persons other than the Agency. Examples of external documents

include contracts to which the Agency is a party that must be signed by a non-Agency party or applications completed by the members of the public and submitted to the Agency.

F. "Internal document" means a form or document created by the Agency and for use exclusively by the Agency in which a signature is required or used.

G. "Manual signature" means an original wet signature applied to a document.

H. "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

IV. **General Policy Rules**

The Agency encourages the use and acceptance of electronic signatures in internal and external activities, documents, and transactions when it is operationally feasible, where technology permits, and permitted by law.

A. Compliance with Law, Policy To the extent permitted by law and this Policy, the Agency accepts electronic signatures as legally binding.

B. Use Optional The use or acceptance of electronic signatures shall be at the option of both the Agency and non-Agency signatories. Nothing in this Policy shall require the Agency to use or permit the use of electronic signatures.

C. Consent All parties that wish to use electronic signatures shall agree to follow this Policy and shall provide written or electronic consent as to the use of electronic signatures.

D. Signature Use The General Manager or designee may require the use of manual, electronic, or digital signatures at his/her discretion.

E. Internal Agency Business The Agency requires that various internal documents be approved by an employee, supervisor, department head, or other Agency staff and approvals for internal documents may be signified by electronic means as a replacement for a manual signature.

F. External Documents and Transactions If an electronic signature is used for an external document involving a transaction with the Agency that creates or imposes a legal duty, the General Manager may authorize or require the use of a digital signature.

G. Documents for Which Electronic Signatures are Prohibited

1. Documents that are intended to be recorded with the county, unless otherwise allowed by law.
2. Signatures that must be made in the presence of a notary public, except as set forth in Civil Code section 1633.11(a).
3. Civil Code section 1633.3 contains a list of other transactions for which electronic signatures are unavailable.

H. Valid Electronic Signatures When a signature is required, the parties may agree that an electronic signature satisfies that requirement if:

1. For digital signatures, the signature is in accordance with the requirements of the UETA and this Policy;
2. For other electronic signatures, the signature is created using an electronic signature technology that has been approved by the General Manager and is in accordance with the requirements of applicable law and this Policy; or
3. The signature is in accordance with any and all other applicable laws and regulations.

I. Valid Digital Signatures

1. Digital signatures used in compliance with this Policy shall have the same force and effect as the use of a manual signature provided that the digital signature has all of the following attributes:

- a. It is unique to the person using it;
- b. It is capable of verification;
- c. It is under the sole control of the person using it;
- d. It is linked to data in such a manner that if the data is changed, the digital signature is invalidated; and
- e. It conforms to the regulations adopted by the California Secretary of State including, but not limited to, the acceptable technology requirements set forth under the California Code of Regulations, title 2, section 22003.

2. The certification authority issuing the certification for the digital signature transaction must appear on the "Approved List of Digital Signature Certification Authorities" authorized by the California Secretary of State.

3. Prior to accepting a digital signature, Agency staff shall ensure that the level of security used to identify the signer of a document is sufficient for the transaction being conducted, that the level of security used to transmit the signature is sufficient for the transaction being conducted, and that the certificate format used by the signer is sufficient for the security and interoperability needs of the Agency.

J. Minimum Standards These are minimum standards. Any transaction must be analyzed under the facts and circumstances existing at the time a transaction has been executed. Depending upon the circumstances, the Agency may require a higher level of signature verification (i.e. out-of-state signatory). Nothing in this Policy prohibits Agency staff, with the consent from the General Manager, from requiring a wet signature or higher form of secure electronic signature if he or she believes it is prudent or necessary.

K. Acceptable Electronic Signature Technologies The General Manager or designee shall identify the level of security procedures required for particular documents. The General Manager or designee shall also identify vendors and technology to execute those security procedures using industry best practices.

L. Further Acts Nothing in this Policy shall prevent the General Manager or designee from adopting additional guidelines or taking further actions to implement this Policy or to add other permissible forms of electronic signatures to this Policy.