

NEBRASKA STATE IRRIGATION ASSOCIATION

1233 Lincoln Mall • Suite 201 • Lincoln, NE 68508 • Phone 402-476-0162 • Fax 402-476-2469

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TO: Chapter 46 Irrigation Districts and Others

Attached are materials which have been developed by a team of advisors to Chapter 46 Irrigation Districts and the Nebraska State Irrigation Association as a result of the laws adopted by the Legislature this year to modernize the election provisions in Chapter 46. The amendments adopted by the Unicameral do two things related to elections of the governing boards of Chapter 46 districts.

1. Changes the term "elector" in Chapter 46 to clearly provide for the participation by qualified irrigation district land holder interests under the many modern ownership interests. These changes will make the eligible "elector" the same for all Chapter 46 districts. Election policy in many districts have allowed these ownerships to participate; while some have strictly limited voting to "traditional" ownership verification.
2. Adds authority to the Chapter 46 Districts to conduct elections by mail balloting. It is very important to understand that this mail balloting authority is strictly voluntary and must be determined by action of the governing board to utilize mail balloting instead of the long traditional process of election management by personal vote casting at traditional polling places on Irrigation District election day.

The materials provided as a guide for the use of the amended irrigation district election laws may be used by your district in the conduct of your governance elections. You are encouraged to consult your own legal advisor in applying this "guide." You may also consult with the Association to develop your policy and procedure prior to your local election.

We sincerely hope that this information will assist you in your compliance with the election provisions governing your District.

For the Nebraska State Irrigation Association



Lee Orton, Executive Director

Attachment: A Guide for Using the New Election Laws for Chapter 46 Irrigation Districts

**A GUIDE FOR USING THE NEW ELECTION LAWS
FOR NEBRASKA CHAPTER 46 IRRIGATION DISTRICTS**

ELECTOR REQUIREMENTS

Must be a resident of Nebraska owning 15 acres or more of land within the District, or an entryman (lessee) of 40 acres or more of State land within the District on a 5 year or longer lease. These requirements must be met for each elector.

RESIDENCE

That place in which a person is actually domiciled, which is the residence of an individual or family, with which a person has a settled connection for the determination of his or her civil status or other legal purposes because it is actually or legally his or her permanent and principal home, and to which, whenever he or she is absent, he or she has the intention of returning, or the place where a person has his or her family domiciled even if he or she does business in another place.

If an elector resides outside of the District they are an elector in the division of the District in which the majority of his or her land is situated, but must still be a resident of Nebraska.

DETERMINING ELECTOR STATUS

The Secretary of the District Board of Directors must:

1. Set a "record date" which shall be not more than 30 days prior to the election
2. Prior to that "record date", the Secretary of the Board of Directors shall establish the status of each elector.
3. If a person fails to establish his/her status as an elector, before the record date, he/she may nevertheless do so by providing information showing elector status to the satisfaction of the Secretary of the Board.

Neb. Rev. Stat. §46-110(2)

WHO QUALIFIES AS AN ELECTOR

Individual landowner who meets the elector requirements above.

Joint tenants, each joint tenant who is a resident of the State of Nebraska in an elector and entitled to vote if the total acreage owned or leased per joint tenant is equal to or exceeds the minimum acreage requirements.

Tenants in common, each tenant who is a resident of the State of Nebraska is an elector and entitled to vote if the total acreage owned or leased per tenant is equal to or exceeds the minimum acreage requirements.

For **corporations, limited liability companies, limited liability partnerships, joint ventures, or any other legal entities**, which meets the minimum acreage requirements, the entity shall designate a shareholder, member, or partner of the entity who is a resident of the State of Nebraska to act as the elector on behalf of the entity. The entity shall identify its elector-designee in writing to the secretary of the board of directors of the irrigation district not less than thirty days

prior to an irrigation district election. **All other legal entities**, includes all political subdivisions of this state and any entity created or authorized under the laws of this state which shall designate a representative elector who is a resident of the State of Nebraska according to that entity's organizational documents, articles, charter, by-laws, or statutory requirements.

Land subject to a life tenancy, each remainderman who is a resident of the State of Nebraska is an elector and entitled to vote if the total acreage owned or leased per remainderman is equal to or exceeds the minimum acreage requirements.

Land held by a buyer in possession pursuant to a land purchase contract when the total acreage under the land purchase contract meets the minimum acreage requirements and the buyer in possession is a resident of the State of Nebraska and is responsible for paying the real property taxes and the irrigation fees and assessments, the buyer in possession is the elector.

Land owned or leased by a trust which meets the minimum acreage requirements, the trustee shall designate a trustor, beneficiary, or trustee of the trust who is a resident of the State of Nebraska to act as the elector on behalf of the trust. The trust shall identify its elector-designee in writing to the secretary of the board of directors not less than thirty days prior to an irrigation district election.

In the case of a pending **estate of a deceased elector** involving land which meets the minimum acreage requirements, the duly appointed personal representative of the estate who is a resident of the State of Nebraska shall act as the elector on behalf of the estate.

DIVISIONS AND DIRECTORS

Upon formation of an Irrigation District, it is divided into three divisions with one director elected from each division.

For Districts comprising less than 15,000 acres, the Board may, by majority vote, submit the question of whether Divisions in an irrigation district may be eliminated and the subsequent election of Directors conducted on an at-large basis, to the electors who may decide to eliminate the Divisions upon the affirmative vote of two-thirds (2/3) of the electors of the district. (Note: This is the total number of electors in the district, NOT the total number of electors voting.) Neb. Rev. Stat. §46-109(3)

In districts comprising **over twenty-five thousand acres**, upon a petition signed by 20% (twenty percent) of the electors being presented to the Board of Directors, the electors may determine by a majority vote to increase the number of directors in any multiple of 3 up to nine, and the district may then be divided into as many divisions as there are directors.

ELECTION POLLS AND VOTING RESULTS

In districts embracing more than 12,000 acres Neb. Rev. Stat. §46-116(2) requires the polls to be open at 8 a.m. on the morning of the election and kept open until 6 p.m. that day. However, in districts embracing 12,000 or less, the polls may, by the direction of the Board, be open at 1 p.m. and kept open until 5:30 p.m. that day.

The Board meets on the first Monday after the election to canvas returns. Neb. Rev. Stat. §46-117(2)

The regular annual election is held on the first Tuesday in February (for 2016, that will be February 2nd). Neb. Rev. Stat. §46-112

PROCEDURES FOR VOTING BY MAIL UNDER LB 561

LB 561 becomes operative on January 1, 2016:

1. The District Board determines:
 - a. Each year whether to hold the next regular election of the District by mail.
 - b. To hold any other election by mail as long as that determination is made at least 45 days prior to the date set for the other election, such as a special election.
Neb. Rev. Stat. §46-115(2)
2. If the election is to be conducted by mail, the Secretary of the Board shall:
 - a. At least 30 days prior to the election, mail to the last known post office address of each elector, a ballot, which lists the names of the candidates, gives instructions and the deadlines to return the ballot.
 - b. The Secretary shall also publish notice of the election by mail in a newspaper of general circulation in each county in which the irrigation district lies.
 - c. The notice shall include instructions and deadlines for requesting a ballot, and instructions and deadlines for casting ballots by mail. The notice shall also include the time and place designated for processing and counting the ballots cast by mail.
Neb. Rev. Stat. §46-115(2)
3. The ballots cast at an election shall be certified to the Board within 3 days after the election or the deadline for casting ballots by mail.

(Forms for use in voting by mail are attached)

Application for Voter's Ballot

Date: _____

I, the undersigned, declare that my voting residence in Nebraska is _____
in _____ County, Nebraska. My land, or the majority of my land, is located in Division _____.

I am a qualified elector of the _____ Irrigation District and I request a ballot for the election to be held
on _____.

☐ I request a ballot be mailed to the following address: _____

The election office may reach me at the following telephone number or email address to verify any information, which might be required, prior to sending the ballots to me.

Telephone Number: (____) _____

Email Address: _____

☐ I am voting as an authorized representative of this entity: _____

Voter Printed Name

Voter Signature

The penalty for election falsification is imprisonment for up to five years, or a fine not to exceed \$10,000.00 or both.

Return to:
(Irrigation District Name)
(Address)
(Address)

Failure to complete and sign the portion below will result in your ballot not being counted.

VOTER'S OATH

I, the undersigned voter, declare that the enclosed ballot or ballots contained no voting marks of any kind when I received them and I caused the ballot or ballots to be marked, enclosed in the identification envelope, and sealed in such envelope.

To the best of my knowledge and belief, I declare under penalty of election falsification that:

- (a) I am an elector of the _____ Irrigation District;
- (b) I reside in the State of Nebraska at: _____

(Street Address)

(City, State, Zip Code)

- (c) I have voted the enclosed ballot and am returning it in compliance with Nebraska Law; and
- (d) I have not voted and will not vote in this election except by this ballot.

ANY PERSON WHO SIGNS THIS FORM KNOWING THAT ANY OF THE INFORMATION IN THE FORM IS FALSE SHALL BE GUILTY OF ELECTION FALSIFICATION, A CLASS IV FELONY UNDER SECTION 32-1502 OF THE STATUTES OF NEBRASKA. THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO FIVE YEARS OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

VOTER MUST SIGN HERE

I also understand that failure to sign below will invalidate my ballot.

Signature of Voter

If unable to sign, make your mark and have witness sign.

Ballots contained in this envelope are for the Election to be held on _____, 20____.
(Date of Election may be found at top of ballot)

Instructions to Voters Voting by Mail

Your ballot must be returned no later than the close of polls on Election Day (6:00 p.m.).

Voter Duties: The initials of the issuing officer shall appear on the front side of the ballot or ballots. If there are no other marks on the ballot or ballots, the elector shall cause the ballot or ballots to be marked and shall place and seal the ballot or ballots in the return envelope received for that purpose. The elector shall complete and sign the Voter's Oath on the outside of the return envelope under the penalty of election falsification and personally deliver or mail, with sufficient postage, to the Irrigation District office in the envelope provided.

Ballots; Voting Procedure. To vote for a candidate or on a ballot question using a paper ballot that is counted by optical scanners, the elector shall mark the ballot by placing an "X" in the box to the left of the name of each candidate, including write-in candidates, for whom he or she desires to vote and, in the case of a ballot question, to the left of the answer he or she wishes to give. Elector shall use a blue or black ink pen and shall not cross out or erase. If you make a mistake you may contact the Irrigation District for further instructions.

Voter's Oath. Elector shall complete and sign the Voter's Oath which is located on the back side of the return envelope which is included herewith.

Ballots, whether returned by mail or personal delivery, shall be accepted for approval by the ballot counting board if they are in the physical possession of the Irrigation District no later than the close of polls on Election Day (6:00 p.m.).