

modify, extend or terminate the project specific fee. After such review, the agency shall propose a fee modification, extension or termination. Any dispute regarding the proposed fee action shall be referred to an independent fact finder selected by mutual agreement, whose costs shall be borne one-half by the holder and one-half by the agency. The fact finder shall review whether the proposed fee action is appropriate under and consistent with the criteria set forth in subsections (2), (4) and (5) of this section. The fact finder shall not review the substance of the protection, mitigation and enhancement measures contained in the water right, the uncertificated claim, the certificate issued pursuant to ORS 468B.040 or 468B.045 or the Federal Energy Regulatory Commission license. The fact finder shall forward its determination in writing to the holder and agency. Upon receipt and consideration of the fact finder's determination, the agency shall notify the holder whether the project specific fee is modified, extended or terminated. If the holder is dissatisfied with the fee action, the holder may request administrative or judicial review in accordance with statutes or rules applicable to a particular agency's fee action. The written determination of the fact finder shall be admissible in any such administrative or judicial hearing. Notwithstanding any other law, a presumption shall exist in favor of the determination of the fact finder and the burden shall be on the party seeking a fee action contrary to the determination of the fact finder to demonstrate that a different fee action is justified under this section.

(7) Subject to subsections (2) to (5) of this section, the amount of a project specific fee shall be established based on an estimate of the cost to the agency of the labor, supplies and overhead expended by the agency in providing reasonable and necessary oversight of a holder's implementation of the protection, mitigation and enhancement measures included in the water right, the uncertificated claim, the certificate issued pursuant to ORS 468B.040 or 468B.045 or the Federal Energy Regulatory Commission license. The estimate used to derive a project specific fee amount shall be determined by using increments of not more than 0.25 full-time equivalents.

(8) A project specific fee shall be payable after issuance of the final order pursuant to ORS 543A.130, or in the case of power claimants and uncertificated claimants, after the issuance of either the director's order or a certificate issued for the project pursuant to ORS 468B.040 or 468B.045. A project specific fee shall be paid in increments that are reasonably related to the work to be performed and set forth in the final order, cer-

tificate issued pursuant to ORS 468B.040 or 468B.045 or the director's order.

(9) Each agency receiving project specific fees shall, on a biennial basis, provide the holder paying the fees with a summary of project specific expenditures. [1999 c.873 §6]

**543.082 Invoice for fees; overdue fee; interest on delinquent fees.** (1) At least 45 days before the fees required under ORS 543.078 or 543.080 become due, the Water Resources Department shall issue invoices to the holder for each fee.

(2) If any holder fails to pay the fees required under ORS 543.078 or 543.080 within 15 days after the date specified in the invoice, the department shall notify the holder of the amount and nature of the overdue fee. Any such notice shall be sent to the holder by certified mail and shall include notification that the holder has 30 days from the date of the certified delivery of the notice to pay the overdue fee or the holder shall be subject to the late payment penalty provisions of subsection (3) of this section.

(3) Any fee that is not paid within 30 days of the date a holder receives certified delivery of the notice required under subsection (2) of this section shall be considered delinquent and shall be increased by 25 percent. In addition, the state shall have a preference lien for any such fee, together with interest at the rate of 10 percent per annum from the date of delinquency, upon the property of the holder used, or necessary for use, in the development of the water right, together with any improvements erected on the property for such development. Upon notice from the Water Resources Commission, the Attorney General shall foreclose the lien and collect the amount due, as provided in this section, in the same manner as other liens on real property are foreclosed.

(4) The remedy set forth in subsection (3) of this section is in addition to any other remedy provided by law for the collection of moneys or for noncompliance with a condition of a water right order, uncertificated claim or certification under ORS 468B.040 or 468B.045. [1999 c.873 §7]

**543.085 Periodic review of annual fee.**

(1) The Water Resources Director shall appoint a review panel to review the amount of the annual fee established under ORS 543.078 in 2003 and 2009 and every eight years thereafter. The review panel shall consist of at least one representative from the following and others at the director's discretion:

- (a) The Department of Environmental Quality;
- (b) The State Department of Fish and Wildlife;