

# **Fluoride Harm**

***Suppressed Science and Silenced Voices***

**A Collection of 21st Century Essays**

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## **The Water System that Refuses to Comply with a State Mandate**

*By: Andy Anderson*

**ABOUT:** *The Ozark Mountain Regional Public Water Authority provides wholesale treated water to 18 cities, towns, and rural water systems in the Ozark Mountain region of Arkansas. At the heart of this operation is a 4.5 million gallon per day treatment facility located on the south shore of Bull Shoals Lake. This lake is a US Army Corps of Engineers Lake whose primary mission is flood control. Andy Anderson has been Chairman of the Board for this system since 2006.*



## CHAPTER 12

"A man dies when he refuses to stand up for that which is right.

A man dies when he refuses to stand up for justice.

A man dies when he refuses to take a stand for that which is true."

—Dr Martin Luther King, Jr.

OUR STORY BEGINS before the implementation of the Arkansas Statewide fluoridation mandate known as Arkansas ACT 197 of 2011.

### **Lay of the Land**

Nestled in the rural expanse of north-central Arkansas, several water systems struggled with insufficient quantity of water during dry conditions and poor water quality. Those waters contain contaminants, such as radon, radium, and naturally-occurring calcium fluoride.

In 2004, twenty-two water systems joined together to form an alliance seeking a solution for our common water challenges. An engineering firm, Engineering Services, Inc. of Springdale, Arkansas, was chosen as the firm to carry this project forward. The Alliance looked at several ideas, finally deciding to pursue one which would take water from Lake Bull Shoals, treat it, then furnish it to the member associations through approximately 120 miles of transmission main lines. This was to be done over a period of many years.

The Alliance began seeking funds for the project, working through State and Federal agencies and our State and Federal congressional representatives, as well as applying for grants from area businesses. In 2006 the Alliance converted to Ozark Mountain Regional Public Water Authority (OMRPWA) giving it the ability to finance projects with construction bonds and to take land by eminent domain. The Authority is governed by a nine-member Board of Directors, with three directors from each county in the primary service area. Work continued toward getting started on engineering, obtaining funding, getting required cultural and environmental surveys, etc. In October 2008, word came down that there could be a federal stimulus fund. If the Authority received adequate stimulus funding, the entire project could be

completed in the next few years. Everyone involved began working diligently so that all would be ready if the funds became available.

Final decisions on the location of the intake and treatment plant had to be made, and surveys of the properties were necessary before any construction could begin. Many meetings were held with the U.S. Army Corps of Engineers, the USDA, the State Health Department, the Arkansas Natural Resources Commission (ANRC), and other key agencies to ensure that every regulatory and logistical hurdle was carefully considered and addressed.

The Authority also needed to obtain appraisals of the properties involved, including the land where easements would be required. Once these appraisals were completed, the land purchases and easement acquisitions had to be negotiated and finalized—a process that took time, effort, and persistent communication.

One of the biggest hurdles we faced was the Corps of Engineers' water allocation study. Under normal circumstances, these studies could take up to five years to complete. However, the Corps recognized the urgency and committed to expediting the process for our project—a crucial concession that kept us moving forward.

In 2009, we reached a significant milestone: we received signed water purchase contracts from 18 of the original 22 water systems. These contracts committed each system to a minimum monthly purchase amount, which was essential for demonstrating to the USDA that we would have the revenue needed to repay the construction loans.

It's important to note that all of this occurred before the state fluoridation mandate legislation was even introduced. At the time, many of the systems were using well water, some drawn from considerable depths. That water often contained radon, radium, fluoride, and other naturally-occurring contaminants—some at levels that threatened both the health and confidence of residents. These systems looked to the Authority's project as a solution: water that would be safe, reliable, and free from those undesirable contaminants.

## **Funding and Fluoride**

We obtained letters of support from local cities, towns, and state and federal legislators, as well as from the Arkansas Department of Health (ADH). On May 1, 2009, the ADH sent a detailed seven-page letter to the USDA, strongly endorsing the need for our project to be funded. The letter emphasized the problems that the project would address if funded and, significantly, it listed **fluoride as a problem** no fewer than 14 times.

This date—May 1, 2009—is important because it clearly shows that at that time, the ADH itself regarded fluoride as an undesirable contaminant. Yet, just two years later, when the Arkansas legislature

considered the proposed statewide fluoridation mandate under Act 197 of 2011, the ADH did nothing to oppose it.

In fact, a Director within the ADH actively promoted the mandate. He provided Arkansas legislators with information from a so-called “screening study” that he had conducted in 2002, which he claimed compared the dental health of school students in a fluoridated community versus an unfluoridated one in Arkansas. According to his testimony, the study showed a 50% reduction in cavities in the fluoridated area—a dramatic result that likely swayed the legislators. Within just 11 days of the bill’s introduction, it was signed into law.

However, when a request was later made under the Arkansas Freedom of Information Act to obtain the data from this study, the ADH claimed that the study data had not been retained. For a study of such significance—one that influenced statewide policy on drinking water—it’s highly unusual, if not suspect, that no data would be preserved. Typically, if a study truly showed such a dramatic benefit, the pro-fluoridation community would be broadcasting it from the rooftops.

Adding to the concern, representatives from the schools supposedly involved in the study were later questioned, and none of them had any recollection of any such study ever being conducted. Taken together, the missing data and the lack of local knowledge raise serious doubts about the legitimacy of the study. By a preponderance of the evidence, I believe that the ADH Director provided false and misleading information to the Arkansas legislature to get the fluoridation bill passed.

Following his successful advocacy for Act 197, this same Director was rewarded with a high-profile job in Washington, D.C., as the Chief Dental Officer for Medicaid and Medicare.

This brings us to the point in time when we at the Ozark Mountain Regional Public Water Authority (OMRPWA) had secured the necessary funding and were actively constructing the treatment plant and installing the transmission mains—well before Act 197 was signed into law. When the fluoridation mandate was enacted, we requested and received authorization from the Arkansas Department of Health (ADH) to delay the installation of fluoridation equipment until our system was fully operational.

Several of our customer entities expressed concern right away. They had signed water purchase contracts with OMRPWA specifically to obtain water **without** the fluoride contaminant—one of the key reasons they wanted to leave their existing, problematic wells behind. These customers made it clear they were opposed to purchasing water that contained fluoride.

When our system became fully operational, ADH began pressuring us to submit plans for adding fluoride to the water supply. However, our Board of Directors—representing the counties and water systems we

serve—began voicing strong opposition to implementing fluoridation by feeding it into the water.

It is important to note that Act 197 requires water systems serving 5,000 or more people to add fluoride to their water. Not one of the systems we supply on its own has 5,000 people; individually, none of them would have been subject to this mandate had they not joined OMRPWA. Ironically, by seeking a reliable, safe water source free of contaminants, they now found themselves caught in the crossfire of a state mandate that would have otherwise left them alone.

### **Defiance and Fines**

The wholesale water systems on either side of us initially also opposed the addition of fluoride to their water supplies. However, under increasing pressure from the Arkansas Department of Health (ADH), they eventually agreed to implement community water fluoridation, leaving OMRPWA as the **only** water system in the state still refusing to comply. This position of defiance only increased the pressure on us. On November 12, 2015, I, the Board chair of OMRPWA, was visited by staff members from two of our legislators who informed me that I could be personally sued for everything I owned if we did not comply.

My stance then—and now—was that OMRPWA is governed by a Board of Directors representing the customers in each of their counties. These customers never agreed to fluoridated water - and actively opposed it - when they signed their water purchase contracts, and they were not willing to accept it now.

On June 18, 2015, the Arkansas Department of Health sent three representatives to our monthly Board of Directors meeting. They came to address our concerns and persuade us to comply with the mandate. Every one of our 18 customers had a representative in attendance, and each was given three minutes to speak directly to the ADH officials.

They arrived expecting to find “dumb Ozark hillbillies,” but quickly discovered that our community members were far more knowledgeable about the risks of fluoride than the supposed experts from the big city.

Our part of Arkansas attracts many retirees who are drawn to its unspoiled environment—mountains, clear streams, rivers, and lakes. Many of these new residents come from polluted urban areas and deliberately seek clean, contaminant-free water. They are well-informed about the potential harms of fluoride—to humans, animals, and the environment.

But the ADH representatives refused to acknowledge any of these harms. One even claimed that the only harm fluoride might cause was some staining of teeth. None of them admitted knowing that powdered infant formula should not be mixed with fluoridated water, or that fluoridated water should not be used in kidney dialysis.

After the ADH representatives left, the Board held a vote, and **all 18** **customers** unanimously agreed that we should continue to refuse to comply with the mandate. Some even declared that they would refuse to pay their monthly bills if fluoride was ever added. I explained that continuing to resist could mean needing an attorney and covering court costs, but the members readily agreed to be assessed extra to fund the legal fight.

After careful consideration, I requested and received a cost estimate from an attorney regarding the expenses we might incur in fighting the fluoridation mandate in court. This attorney was not only knowledgeable about the harms of fluoride, but had also worked with us previously and fully understood the stakes. He provided a clear estimate and verbally agreed to represent us all the way to the Arkansas Supreme Court for a fee of \$12,500.

To cover this cost, letters were sent to each of our 18 customer systems requesting a contribution of \$695 each. This would allow us to raise the necessary funds to proceed with the legal challenge and stand firm in our refusal to fluoridate the water.

The legal process began when we received a notice to appear before the ADH Administrative Board at 10 a.m. on March 29, 2016. That hearing unfolded exactly as we expected: the ADH acted as the prosecutor, judge, and jury all in one. They showed no interest in hearing our side of the story. Their verdict was straightforward: Act 197 is law, and “you must comply.” If we failed to comply, they warned, we would be fined \$500 per week.

Following the Administrative Board’s decision, the case advanced to the full Arkansas Department of Health Board for a hearing on July 28, 2016. Unfortunately, that hearing was nothing more than a carbon copy of the first. Again, there was no genuine interest in considering our evidence or concerns. The ruling remained the same: Act 197 is the law, and you must comply.

Faced with no other choice, we appealed the ADH ruling to Circuit Court, filing the appeal on September 7, 2016.

The Arkansas Legislature meets only in odd-numbered years. In every legislative session since Act 197 was passed, we have introduced bills in an attempt to overturn the statewide fluoridation mandate. I, along with others from our community, have consistently tried to provide testimony before the committees where these bills were heard. So far, however, we have been unsuccessful. Arkansas politicians seem to be heavily influenced by lobbying groups with deep pockets and the ability to contribute generously to their campaigns.

During this time, we initially had an attorney who was both knowledgeable and deeply committed to working with us on this issue. Unfortunately, that changed when he left his law firm and we were assigned to another attorney—one who seemed more interested in

serving the system than representing our interests. He refused to honor the verbal cost estimate we had arranged with his predecessor. Instead, he began billing us in quarter-hour increments for every email he sent or received, as well as every phone call. Our small legal defense reserve was rapidly depleted.

Over the next two years, we filed multiple motions to stay the legal action against us until the Fluoride Action Network's lawsuit against the EPA was resolved, along with other motions aimed at delaying our case. Unfortunately, we were unsuccessful.

Our hearing in Circuit Court was held on March 7, 2019. Despite our efforts, we were not given an opportunity to testify. The Court simply reviewed the Arkansas Department of Health Board's ruling that we were appealing and upheld it.

At that point, our only remaining recourse was to appeal the Circuit Court's decision to the Arkansas State Supreme Court. I firmly believed that I would get a chance to testify before the Arkansas Supreme Court.

There are three fundamental beliefs I hold regarding Arkansas's mandatory fluoridation law, and these are the very points I have been anxiously waiting to present—yet I have not been given the opportunity.

**Number 1:** Mandatory fluoridation is an **unjust law** because the people directly affected by it never had the opportunity to vote on it—neither to approve nor to reject it. Instead, a small group of ill-informed legislators made this critical decision on behalf of everyone, bypassing the will of the people.

**Number 2:** Mandatory fluoridation is an **unethical law** because it constitutes forced medication without informed consent. Legislators have no authority to mandate what medications are appropriate for the citizens they represent. This law removes individual choice and violates the ethical principle of consent that is foundational to medical practice.

**Number 3:** Mandatory fluoridation **violates the Federal Safe Drinking Water Act (SDWA)**. The SDWA applies to all water systems in the United States and prohibits the addition of any substance to drinking water for the purpose of preventive health care. The sole reason fluoride is added is to prevent tooth decay but there is not one function in the human body that requires fluoride. While the SDWA does grant states "Primacy" to regulate their own water supplies, that Primacy is conditional: state regulations cannot be **less stringent** than federal regulations. If the federal SDWA prohibits preventatives but a state mandates a preventative, then the state's regulation is, by

definition, less stringent. In that case, the state cannot legally mandate fluoridation and still maintain its Primacy.

### **Appeal**

These three points form the backbone of my case, and I remain determined to present them before a court.

The appeal to the Arkansas Supreme Court was not at all what I had expected. Instead of reconsidering the validity of the Circuit Judge's decision, the Supreme Court only reviewed whether the lower court had followed the proper legal process. I did not get to testify, and the Court ultimately affirmed the Circuit Court's ruling.

One critical issue that emerged was that our attorney had failed to challenge the **constitutionality** of the fluoride mandate in the lower court proceedings. That misstep left us with no avenue to argue this important point during the Supreme Court appeal. As a result, the only remaining legal option is for us to file a **new court case** that specifically challenges the constitutionality of Act 197. Unfortunately, for a small, non-profit entity like ours, the cost of starting a brand-new legal fight is prohibitive. If, by some miracle, we do secure the funds, we will challenge this state law.

At every monthly Board of Directors meeting, fluoridation remains a standing agenda item. The Board has consistently and unanimously decided that we will **not** add fluoride to our water supply. It is not my decision alone; OMRPWA is governed by a Board of Directors, and they are resolute in their position to keep fluoride out of the system.

This journey has taught me a lot about how the government and the legal system work—and, often, how they don't.

- I have learned that our elected legislators are heavily influenced by lobbyists. A retired lobbyist once told me, "If you will give me enough money, I can get any legislation passed—good or bad." Those words have proven truer than I could have imagined.
- I've also learned that the legal system is, in many ways, a money machine. Lawyers often seem to churn paperwork more to bill the customer than to actually resolve the issue. If a lawyer refuses to listen to the client, they should be fired and replaced with someone who will. This is especially critical when the lawyer does not share the client's perspective or commitment to the cause.
- We made a fatal mistake early in our case—one that left us in a legal tangle with no straightforward way out except to file a new case from scratch.

Meanwhile, we are being fined **\$500 per week** for refusing to comply with this unjust mandate. Yet if we were to comply, we would face an even bigger problem: many of our wholesale customers have already vowed to refuse to pay for water containing fluoride.

As a Board, we feel more than justified in our position, and we are committed to fighting this battle until we prevail.