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## Graveley Sirmmental Ranch Co. v. Quigley, 65 P.3d 225 (Mont. 2003)

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the boundary line and did not extinguish them. Lastly, the court affirmed O'Brien's motion to strike part of the Card's appendix, a color-coded map, since it was never filed with the district court as an exhibit.

*Natalie Lucas*

## MONTANA

**Graveley Simmental Ranch Co. v. Quigley, 65 P.3d 225 (Mont. 2003)**  
(finding that reasonable limitations pertaining to ditch maintenance on easements are appropriate and joint liability for such ditch repair is proper).

Graveley Simmental Ranch Co., Clifford E. Graveley, McIntosh Ranch, and William McIntosh ("Graveley") owned and maintained a ditch ("Graveley Ditch") that carried water from Ophir Creek to their property in Powell County, Montana. James C. Quigley ("Quigley") owned and maintained a separate ditch ("Quigley Ditch") that transported water from Ophir Creek. Quigley's ditch ran across Graveley's land pursuant to a secondary easement, and followed the same course as the Graveley Ditch. Over the past several years, Graveley unsuccessfully contested Quigley's ownership rights to the Quigley Ditch, and sought numerous judicial decrees to limit Quigley's ditch flow right and ditch size due to a breach and subsequent washout in 1948 caused by the Quigley Ditch carrying too much water. On May 23, 1995, the Quigley Ditch broke again, causing a washout that destroyed the Graveley Ditch and damaged Graveley's property. This landslide prompted the initial lawsuit filed by Graveley against Quigley in the Third Judicial District Court in Powell County. The district court limited Quigley's ditch right to 800 miner's inches, limited Quigley's easement rights pertaining to Graveley's property, assigned joint liability to the parties for the 1995 washout, ordered Quigley to pay Graveley's attorneys fees, and refused to grant Quigley a new trial regarding a previous injunction temporarily limiting Quigley's ditch flow to 400 miner's inches. Both parties appealed the district court's judgment.

The Supreme Court of Montana reviewed the lower court's limitation of Quigley's ditch flow right according to the applicable standard of review, which required the court to affirm the ruling absent a determination that it was clearly erroneous. The court reviewed all previous disputes between Quigley and Graveley regarding Quigley's ditch flow right, and found that, in almost all judicial orders, the courts decreed the ditch as having a carrying capacity of 800 miner's inches. Since the district court's ruling was not clearly erroneous, the court affirmed the ruling on this issue.

Using the same standard of review, the court then reviewed the district court's limitation of Quigley's easement rights, which limited the size of machinery Quigley could bring onto Graveley's property to maintain and repair the Quigley Ditch, and which required Quigley to access Graveley's property using specific vehicles and specific routes. The court affirmed all of these limitations except the one limiting the size of machinery Quigley could use to repair and maintain his ditch. The court reasoned that limiting Quigley to the use of smaller equipment could be dangerous and much less effective than using larger equipment. Thus, the court ordered that Quigley be permitted to use any equipment designed for ditch repair and maintenance, so long as such equipment would not damage Graveley's property or expand the current dimensions of the Quigley Ditch.

Next, the court determined whether the district court erred in finding both Quigley and Graveley jointly liable for the washout. The court reviewed the evidence brought before the district court, which consisted of two credible, though contradictory reasons for the washout. Evidence presented by Quigley blamed the washout on Graveley's recent remodeling of the Graveley Ditch, while evidence presented by Graveley blamed the washout on the Quigley Ditch carrying too much water. The court concluded that the district court's apportionment of equal fault to both parties was not erroneous, and therefore affirmed the finding.

The court also affirmed the district court's order that Quigley pay Graveley's attorney's fees. The court found the lower court had correctly applied the relevant state statute entitling the prevailing party to reasonable attorney's fees. According to the district court, Graveley prevailed on the only claim he brought against Quigley—an encroachment claim—and was therefore correctly awarded attorney's fees.

Next, the court reviewed the lower court's refusal to grant Quigley a new trial regarding an injunction temporarily limiting Quigley's ditch flow to 400 miner's inches until he could prove it was safe to transport more. The court affirmed the district court's ruling, which was based on Quigley's failure to present new evidence sufficient to prove this fact. Lastly, the Court found that the lower court had not abused its discretion when determining the amount of damage suffered by each party due to the washout. The court therefore affirmed this determination.

*Kate Osborn*

**Geil v. Missoula Irrigation Dist.**, 59 P.3d 398 (Mont. 2002) (holding legislation permitting irrigation district members to petition for exclusion from the district for taxation purposes did not violate district's rights to equal protection or due process).