

River Police: Early Game Wardens on Michigan's Au Sable River

by Bryon Borgelt



*On the Au Sable River in Grayling.
Used with permission from the Crawford County Library System.*

IN 1878, THE MICHIGAN Sportsmen's Association called the Michigan Fish Commission's attention to declining numbers of grayling in the Au Sable River.¹ In the four short years since Thaddeus Norris announced the bounty of Michigan's indigenous cold-water game fish to America's angling public, overfishing, logging, and nonnative competition from brook trout threatened the fragile fishery. The association's call prompted the commission to expand its regulation beyond the commercial whitefish industry to the growing sportfishing industry, centered on Michigan's grayling, brook trout, and bass. New legislation, along with game wardens' increased police powers, sought to prevent the annihilation of one of America's greatest game fish, the Michigan grayling, *Thymallus tricolor*.

Michigan's game laws and game warden system found their origins in the declining whitefish industry of the 1870s. The population's decline was traced to overfishing and urban growth. Artificial fish propagation was the conservation

method of the day, and a private effort developed among the Detroit whitefish fleet.² It became apparent that the environmental dilemma facing the fishing industry could not be solved through private efforts alone. Instead, the state government legislated conservation efforts and collaborated with private hatcheries to broaden its efforts in fish conservation.

The Michigan state legislature had convened in 1873 and had immediately addressed the commercial-fishing issue. That same year, with the support of Governor John Bagley, the Michigan Fish Commission was formed. The first board consisted of Governor Bagley, George Clark, and George Jerome Niles. The primary focus of the group was to immediately address the whitefish stocks in the form of artificial propagation. Soon, however, prodded by private conservation organizations that sprung up out of concern for the endangered grayling, the commission redefined the status of commercial and recreational fish. In doing so, Michigan criminalized previous customary fishing practices.

Conservation among sportsmen has a mixed past. Historian John F. Reiger's *American Sportsmen and the Origins of Conservation* (1975) stated that sportsmen were dedicated to protecting nature. He wrote:

Farmers and ranchers made poor nature lovers, seeing wildlife only as competitors or sources of profit. Sportsmen, on the other hand, regarded most animals and birds with nonutilitarian motives. Not depending on nature for a livelihood, sportsmen were the only large group of Americans who came to woods and fields for mainly recreational and aesthetic reasons. It is no wonder, then, that they would take the initiative in preserving nonsporting species as well as those traditionally pursued as game.³

Game conservation laws were relatively new to Michigan and America at the turn of the twentieth century. Before the mid-1800s, few states had game and fish laws. Most human populations were used to hunting and fishing unfettered



A better-than-typical 1912 day: fishing demonstrates the benefits of the state's hatchery. Used with permission from the Crawford County Library System.

by state and local restrictions. Fishing for local inhabitants not only provided a little rest and relaxation, but also food for the table. Market hunters and fishers hunted and fished for pay. Not all local inhabitants were interested in the joyous pleasures of casting a fly rod for small trout; instead, they looked for more reliable angling methods. In 1873, Michigan closed inland waterways to netting during the months of March, April, and May.⁴ This was one of the earliest state fish and game regulations. In 1891, the use of spears, dynamite, explosives, and artificial lights was prohibited.⁵

THREATS TO MICHIGAN'S GAME FISH

A tradition of angling and hunting, regulated by custom and guided by natural observation, had kept game and fish populations in check. The onset of modern technology, combined with a surge in population growth and expanding markets, necessitated the creation of state fish and game laws. Hunters and fishers serving the urban markets of Chicago, Detroit, and Toledo deployed the newest technology in order to capitalize on growing demand. Pothunters, as they were called, played their role in the grayling and passenger pigeon's extinction. New technology in the form of guns and nets allowed for larger kills in the fields and streams. In 1875, laws aimed at market fishermen banned the selling and buying of fish during closed seasons.⁶ Just two years before this law was passed, the fishing for brook trout and grayling was restricted to a season between June 1 and October 1.⁷ Also in 1875, the sale of brook trout and grayling to out-of-state parties was outlawed.

Michigan reiterated the ban on out-of-state sales of brook trout and whatever grayling one could find in 1907, and also added bass to the regulation.⁸ The market and local subsistence fishermen certainly took a toll on the state's resources.

Just as responsible for the destruction of Michigan fish and game was the rush of adventurous sporting men. Railroads and a changing economy of the industrial late 1800s allowed both the convenience and time to take to the woods and streams of northern Michigan. Their destruction of fish and game in the name of sport caused widespread damage, perhaps more so than the pothunter. Every

week during the season, fishermen departed from cities throughout the Midwest on trains to Grayling. There, scores of fishers set out with their parties and their guides to take part in an angling tradition. Every fish of legal size was kept in the era before size restrictions and creel limits. Some fish were fried in bacon grease over campfires, but most were packed in salt, or worse, buried in the sand along the banks. Sportfishermen of the time often blamed the pothunters and the local subsistence fishers but neglected to look in the mirror and take responsibility for their own actions.

According to Reiger, sportsmen followed an unwritten moral code for their streamside conduct. He suggested that leaders such as George Bird Grinnell (1849–1938) and Charles Hallock (1834–1917) promoted the English fishing and hunting practices that emphasized sportsmanship and not the harvest of meat for the home or the market. Three classes of Au Sable anglers emerged as the river reached national prominence in the last quarter of the nineteenth century. The first contained local farmers and laborers who mostly fished for subsistence and did not adhere to the new laws coming out of Lansing. The second group was semilocal; the majority were nouveau riche industrialists who owned property in the form of a vacation home or lodge. They followed and helped to direct many of the state's conservation laws. Finally, the third group was made up of middle-class fishing tourists. Some fished for



Private parties started planting rainbow trout in the Au Sable in 1874. Ten years later, after it was determined that a viable grayling population no longer existed in the system, the state began yearling brook trout plantings. Used with permission from the Lovells Township Historical Society.

sport and others for the table; they were a mixed group. Some supported conservation, others did not. Like so many spawning trout trying to protect their redds, the competition created turf wars.

In the battle for control of the local waters, sportsmen had the upper hand. Personal, business, and political connections and influence allowed them to direct conservation measures aimed at treating fish and game as commodities rather than sustenance. Efforts along the Au Sable combined three stages of game conservation. Stage one sought to reduce the level of killing to protect game for the specific special interest group. Sportsmen anglers achieved this by banning means other than hook and line for fishing. Stage two involved the sentimental protection of game. This called for the protection of game for their aesthetic pleasure. Bag limits first went into effect in 1903 with a creel limit of fifty game fish. At that time food fish, such as walleye or perch, were unregulated. The third stage focused on economic protection. Grayling and trout were viewed as resources for tourism. Money spent on the resource was viewed as an insurance policy on the asset for its future existence.⁹ The Au Sable, Michigan's most popular trout tourist destination, was the only stream in Michigan to carry an 8-inch limit on rainbow, brown, and brook trout in 1901.¹⁰

William Butts Mershon, northern Michigan's leading conservationist and one of the larger trout-water property owners on the Au Sable system, favored the final stage of game conservation. He disagreed with locals, farmers, and even the Michigan Fish Commission for their view that fish served as a food source. In his mind, the brook trout had a higher

calling as a sport fish and as ". . . the largest interest the public has in these natural resources that are so attractive to non-residents who come to Michigan to spend their money because of the fishing, boating, sailing and outing in the forest and stream."¹¹ The fish were a resource that brought anglers and their money to the towns and villages along the Au Sable. In order to keep that revenue flowing, measures for the protection of the resource needed to be passed and enforced.

FOREST AND STREAM WATCHMEN

Enforcement of the state laws proved difficult. Game wardens were on the front line of state conservation. The protection of game and fish and the prevention of forest fires were the main duties of these wardens. Wardens were first appointed by the governor in 1873 and were paid an annual salary of \$1,200. Representing the people of Michigan, wardens could bring any violator of state game laws to court in any county with the same power as an attorney general. To conduct their investigations, wardens were allowed to:

Search any person and examine any boat, conveyance, vehicle, fish box, fish basket, game bag or game coat, or any other receptacle for game or fish, when he has good reason to believe that he will thereby secure evidence of the violation of the law; and any hindrance or interference or attempt at hindrance or interference with such search and examination, shall be prima facie evidence of a violation of the law. . .¹²

Wardens were given the same power as police and could arrest without warrant any person deemed to be in violation of state game and fish laws.

The new warden system furnished private fish and game clubs with their own deputized managers. The law stated, "The said game and fish wardens may be employed by individuals, clubs, and corporations interested in the enforcement of the fish and game laws . . ."¹³ Whereas in other states, clubs hired individuals to manage private waters, in Michigan they employed and deputized individuals of their choice to police private waters. Any transgressions against the law or any interference with the duties of the warden could result in a minimum \$10 fine and a court hearing. Those who could not pay the fine were to be held in jail until the fine was paid.¹⁴ This also meant that private citizens and organizations had the ability to make sure that state laws were carried out on public and private waters of their concern, all financed through private money. Wardens were either privately or locally financed until 1913 when Michigan started its out-of-state fishing license and began paying for them through these fees.¹⁵

Game wardens loyal to state laws were the surest method of conservation. Without game wardens, locals were reluctant to turn their neighbors in. A report to the state mentioned that retaliation was a problem on the North Branch. Mershon wrote about out-of-season fishing:

A gentleman from Grayling told me yesterday that within a week he had seen three trout in the possession of a man on the North Branch that weighed 4 lbs. in all and these three trout were taken out of the North Branch near the bridge at Lovells; that they were fishing right along; and that he had not dared to make a complaint for fear they would burn up his mill.¹⁶

Additional complaints indicated that individuals still used dynamite to fish. Dynamiting had long been outlawed. Fear of retaliation no doubt had an impact on those who wished to enforce the laws.

While retaliation was one factor that worked against the game-warden system and state laws, the reluctance of local courts to hold game violators accountable also limited the scope of the conservation laws. One group of Au Sable deer poachers benefited from the local judiciary. Although fines could have totaled \$50 per offender, the local "weak-kneed justice" fined the poachers \$10.¹⁷ The judge kept the fine to the minimum amount allowed by law, suggesting that



William Mershon's High Banks Lodge on his 1,520-acre property on the North Branch of the Au Sable, purchased in 1905. Used with permission from the Lovells Township Historical Society.



By the late 1890s, Au Sable logging scoured the streambed and silted the water, weakening the threatened grayling's existence. Used with permission from the Fuller's North Branch Outing Club.

such infractions were of relatively minor concern.

Historian Karl Jacoby detailed the work of game wardens working in New York's Adirondack Park. He described the relationship as it developed between game wardens and the local population they were supposed to police. The Adirondacks were surprisingly similar to the Au Sable region. Both had witnessed the quick and transient economy of unregulated logging in the nineteenth century. Outdoor recreation tourism sprung up in the wake of the lumber industry. Wealthy urban industrialists purchased lands, lakes, and stream-front property. Private clubs and lodges appeared to serve the sportsmen and their desire for productive hunting and fishing. The local population was dependent on the new industry, but also used the traditional methods of a subsistence economy. Rivers provided fresh fish, and the forest provided wild meat, berries, and nuts. In 1872, as a response to environmental threats, conservation from the outside in the form of state laws sought to regulate Adirondack land and water usage. "Law and its antithesis—lawlessness—are therefore the twin axes around which the history of conservation revolves," wrote Jacoby. "To achieve its vision of a rational, state-managed landscape, conservation erected a comprehensive new body of rules governing the use of the environment. But to create new laws also meant to create new crimes."¹⁸ Dynamiting and fishing out of season had been accepted practices in both New York and Michigan before the states outlawed such practices. Some

locals followed the new laws, but others continued their traditions by defying the laws and an institutionalized concept of conservation.

Both conservationists and locals agreed on one thing: the best game wardens were local game wardens because, according to Jacoby, they knew the landscape and the people. They were familiar with the habits of the local fish and game as well as those who hunted and fished them. They also knew the likely violators. The need to find a local man to carry out the warden job was evident in Mershon's desire for someone who knew the area and who would not have a problem enforcing the law. The two men

whom Mershon advocated for the most, E. Purchase and Rube Babbitt, were both natives of the area and knew every bend and twist in the Au Sable and its branches. Local fishers and hunters *also* wanted one of their own to carry out the warden job because, in their minds, the best wardens were those who were reluctant to enforce the state laws or to prosecute offenders. The best wardens might offer a warning or suggest that someone not be caught fishing out of season. Locals often sought methods to control game wardens who would not cooperate on their terms. Jacoby wrote that local tales of accommodating game wardens were "an expression of how locals thought the relationship between foresters [i.e., game wardens] and local people *should* function—[tales] were likely employed as a way to reinforce community solidarity while also nudging present foresters [game wardens] toward more accommodating modes of behavior."¹⁹

One method of control on the Au Sable was for local government to refuse to reimburse the game warden for expenses incurred during the enforcement of his job. According to state law, counties or private organizations were responsible for the county warden's salary, but the county had to reimburse the local warden for expenses.²⁰ In January 1906, the Crawford County Board of Supervisors refused to reimburse Warden Purchase the \$11 for previously performed game warden services. The same request had been refused for the previous three years. Any number of factors could explain the specific reason that Crawford County failed to reimburse its game warden. The end result was that the county did not see the merit



Game Warden E. Purchase, the Au Sable's first warden, holding the North Branch's first brown trout. Used with permission from the Lovells Township Historical Society.



Left: Lovell's leading citizen, T. E. Douglas, one of the North Branch's earliest lodge owners and conservationists. Used with permission from the Fuller's North Branch Outing Club.

Below: In 1916, Douglas established the North Branch Outing Club as the final days of his logging business came to an end. Used with permission from the Fuller's North Branch Outing Club.



in taking care of its game warden or the ecosystem he was appointed to protect. Purchase was known to rule the river with an iron fist, taking in anyone who fished out of season, kept short fish, or fished by illegal means. He closely adhered to the game laws. Warnings seemed infrequent and court appearances often. While the local government failed to reimburse the local warden, concerned conservation anglers took notice.

PRIVATIZED GAME WARDEN CONSERVATION

Disappointed with the lack of enforcement on the Au Sable's North Branch, Mershon wrote to the state requesting the private hiring of Mr. Purchase in 1906:

I have a letter from T. E. Douglas, Grayling, Michigan this morning in relation to the fishing of the North Branch of the Au Sable. He says, "We are

sadly in need of a game warden. It is too bad to have so many small fish taken. I was talking with Rube Babbitt to-day; he runs the Club House on the main stream at Stevens Bridge and he says they are taking everything from 4" up."

There is a man there named Purchase who was Game Warden once and he was the only good one I know of in the State of Michigan. He was not afraid of a soul and would stop everyone and search their baskets and boats; but on account of no salary allowances, he resigned. If he could be reappointed I would guarantee to pay \$100.00 towards his yearly salary, for one year at least & run the chance of getting my friends here in Saginaw to chip in this amount.

Violations of the fishing laws have been very open this year. Mr Callan of Saginaw told me, a week ago, before the season opened, he was at Clare and saw a man catching trout, he actually saw the trout taken out of the water. George Morley of this city told me that on either April 28th or 29th he was told by an acquaintance in Saginaw that he had that day received a fine mess of trout from some up country friend of his.

The limit as to length has very little attention paid to it on the North Branch of the Au Sable. A game warden would make an example of these law breakers with the greatest ease if he had any disposition to do so."²¹

Soon Mershon's personal friends were sending their payments to Douglas, a former lumberman and successful fisherman's lodge owner, for the North Branch Protection Fund. Within a month Douglas collected a total of \$191, \$10 to \$15 at a time.

From whom did the streams need guarding? Purchase's benefactors believed the greatest threats came from the local population and the uninformed traveling trout tourists. One of his first jobs was to post signs informing anglers of the Au Sable's special 8-inch limit, 1 inch longer than streams in the rest of the state. He also wasted no time in taking in fish-law violators. Douglas wrote to Mershon to inform him of Purchase's effectiveness: "He has convicted nine and got them all scared. One man would not allow him to

examine his creel and it cost him \$14 just the same."²² Douglas had the greatest stake in Purchase's work. As an outfitter, Douglas was a local who served out-of-town fishermen. Some of these fishermen were an early breed of angling conservationists. Others were merely tourists, hoping to have a weekend of angling fun and arrive home with a full creel.

Douglas could not afford to alienate his clientele. At the same time, he needed to protect the resource that brought anglers to his establishment. The 8-inch-limit law helped to ensure that some natural reproduction took place, which bolstered the stream population.

In Warden Purchase, Mershon and Douglas found the perfect solution to game violations along the Au Sable. Mershon was happy to hear that game laws were enforced and prosecuted, even if local economic support was lacking, and Douglas could promise his anglers the opportunity to fish a stream that was held to the highest conservation standards. Personally, Mershon could not have been happier—that is, until one of his close friends found himself on the wrong side of the law.

MERSHON'S CONSERVATION CONTRADICTION

W. J. Hunsaker was a prominent Saginaw newspaperman and personal friend of Mershon. Hunsaker made several hunting and fishing trips with Mershon, but in July 1906, he fished the North Branch while Mershon was away fishing for salmon in Canada. Warden Purchase stopped Hunsaker, as he tended to do with everyone, and inspected his creel. In measuring out all of the fish—which may have been many because the creel limit for the Au Sable and all of Michigan streams was thirty-five fish a day, with a total limit of 100 fish in possession—Purchase found one that did not measure the full 8 inches required for possession of an Au Sable trout. He arrested Hunsaker and charged him with violating the state fish law.

Mershon was outraged that Purchase would find a personal friend of his—someone he knew to be supportive of game conservation—to be in violation of the law. He wrote to Michigan State Game Warden C. H. Chapman:

Now I think that it would be a good plan to caution Purchase not to be too technical; where the intent of the law is not violated, he should not split hairs. Almost everyone will sometimes get a trout in his basket that, after it has shrunk a few hours, will be $\frac{1}{8}$ " scant. Technical inforcement [*sic*] of this kind



William B. Mershon and Rube Babbitt prepare to stock the Au Sable with fingerling trout. Used with permission from the Lovells Township Historical Society.

in a case like this only puts both the law and the inforcement [*sic*] in disrepute.²³

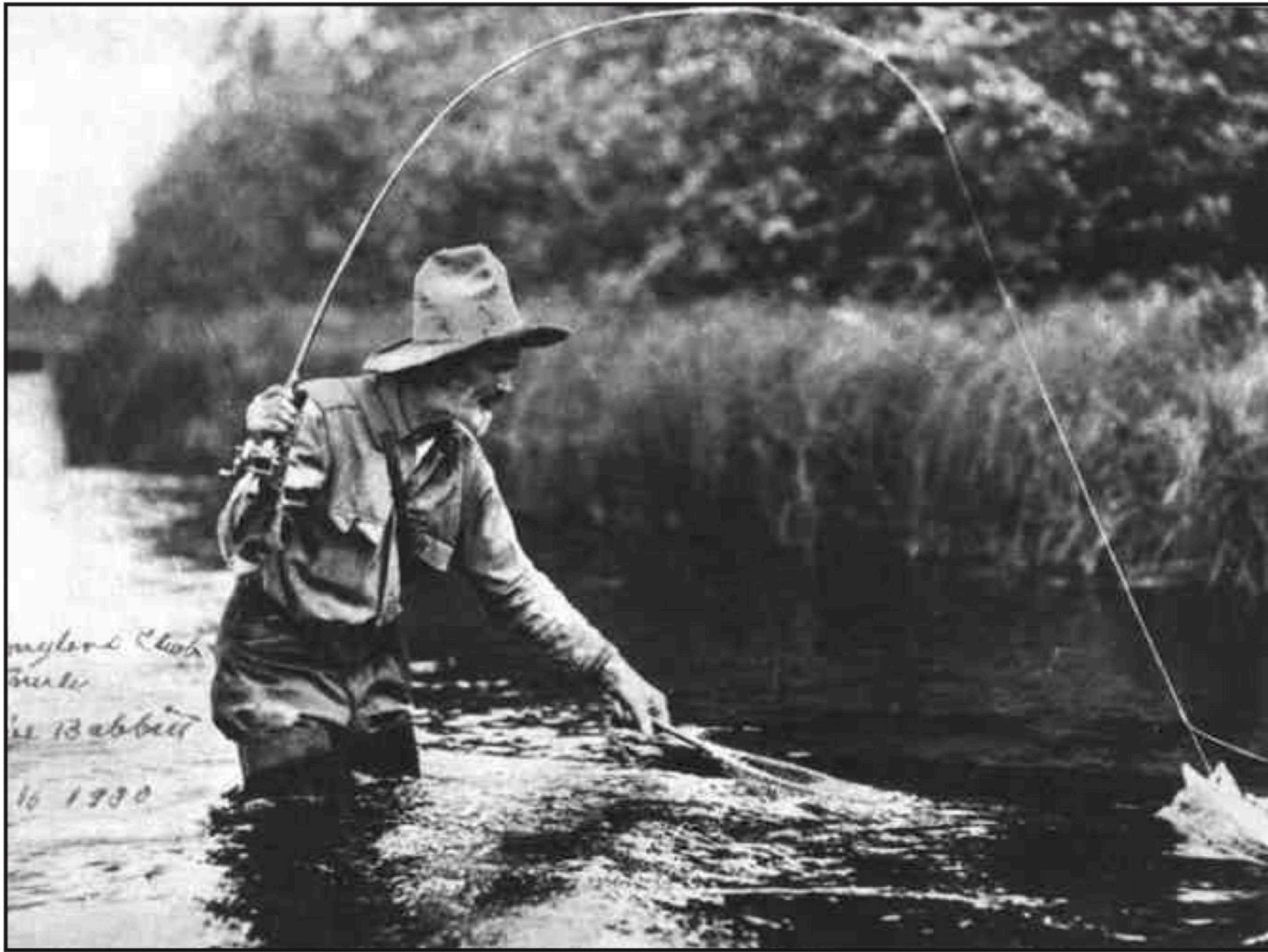
Douglas entered into the argument by siding with Purchase. He wrote to Mershon stating, ". . . Mr. Hunsaker got caught but if he takes his chances of keeping short fish and gets caught he is . . . to stand the consequences than a man that counts in the mill."²⁴ Mr. Hunsaker admitted guilt when he swore in his trial that the fish was short at $7\frac{3}{4}$ inches. Douglas felt that even among the rich and influential guests who visited his river, the rules were the same, and all should be subjected to the consequences if they chose to violate them.

Mershon was not of the same opinion. Suddenly the warden whom he had championed for his reputation of stopping everyone on the stream had targeted the very men who paid his salary. Mershon hated it when a warden served the interest of the guides, market hunters, and the local population, as was the case with his disdain for the failed Saginaw

warden system, but he expected preferential treatment when it applied to those who were supposedly on the right side of conservation. Eventually Mershon got over the Hunsaker issue and supported Purchase's work. The following summer Purchase fell victim to personal health issues and died in a sanitarium in Detroit. Other state game wardens took his place, but none gained as great a reputation as Reuben S. Babbitt of Grayling. Babbitt guided on the local Au Sable waters, was a caretaker at one of the main branch clubs, and went on to become the most famous of the Au Sable game wardens.²⁵

THE GAME WARDEN LEGACY

The county warden system highlighted the division between the different angler factions. Douglas needed to make sure that his guests were able to enjoy the quality fly-fishing experience that they had paid for. Mershon wanted someone who would follow the state conservation



A later photo (1930) of Game Warden Rube Babbit on his favorite river.
Used with permission from the Fuller's North Branch Outing Club.

laws to the letter but extend leniency to his fellow upper-class friends. Purchase did not seem to indicate that he owed his allegiance to anyone other than the state conservation laws, as was demonstrated by his refusal to back down with the Hunsacker situation. Local authorities opposed the outside influence by refusing to reimburse Purchase for his work-related expenses.

Michigan's local-warden system was about control and access to state resources. Over the decades, the state appropriated the power to regulate resource management with local oversight. Legislation followed a top-down path. Game wardens split the difference between state mandates and local adherence. Mershon and Douglas represented the growing influence of special interest groups who had a role in directing the state's conservation agenda.

The duality of cooperation and tension between the different classes of Au Sable anglers was highlighted by Purchase's efforts. As a fellow native, perhaps other local anglers felt Purchase would turn a blind eye to their occasional dynamiting of the stream or out-of-season fishing. Douglas put his faith in Purchase's ability to protect the resource that his lodge depended on: a steady supply of trout for the angling tourists. Mershon saw Purchase as an extension of his own personal conservation agenda against local and transient anglers. In the end, despite the various economic, political, and personal influences, Purchase's

actions seemed devoted to a moral ecology based on what was good for the river and its trout. These same principles would later guide a group of anglers to establish Trout Unlimited on the banks of the Au Sable in 1959.



ENDNOTES

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19. *Ibid.*, 37.
20. State of Michigan Game and Fish Laws and Laws Reflective to Destruction of Noxious Animals (1909), Act 28, P.A. 1887, 7.
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