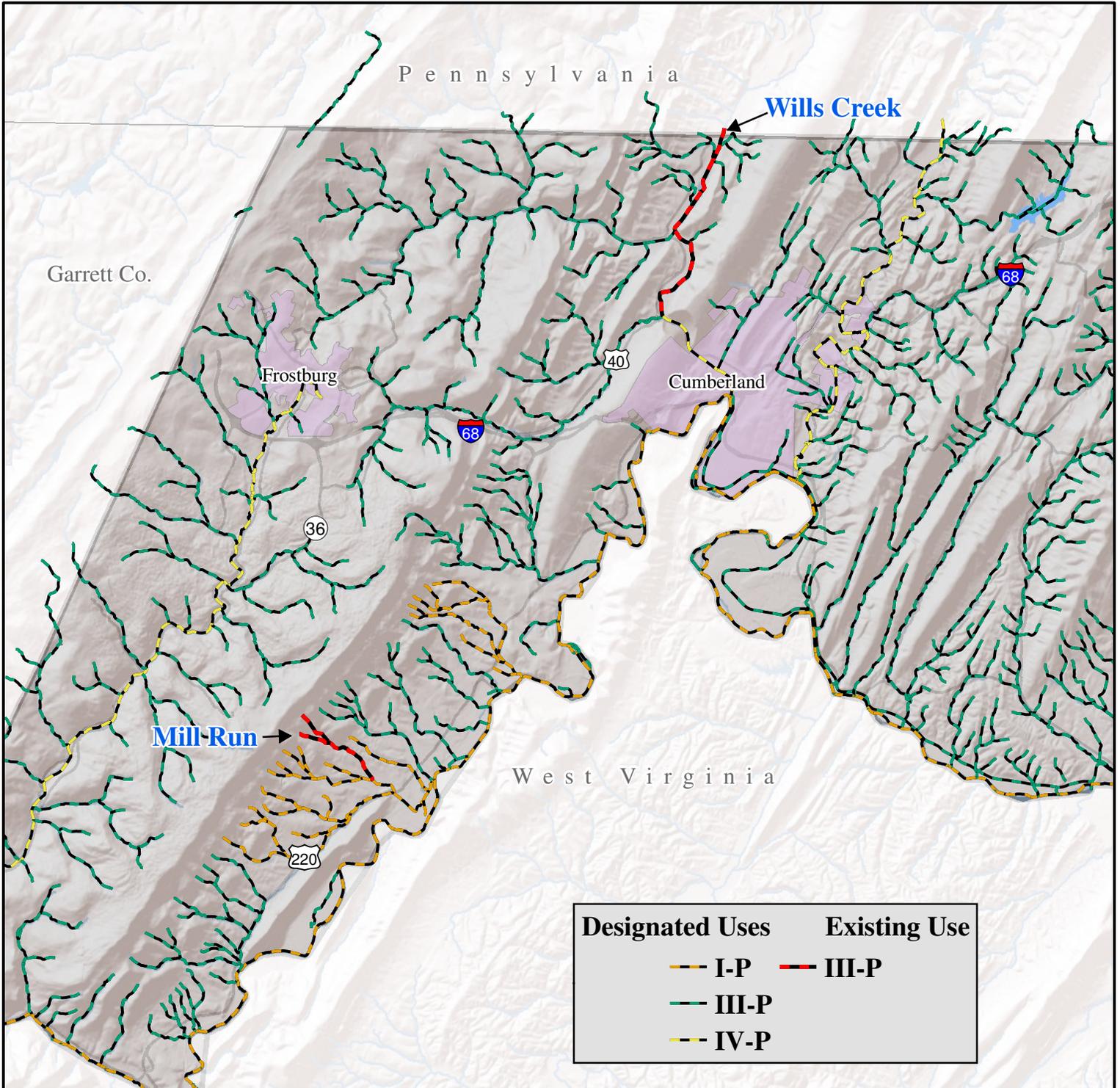
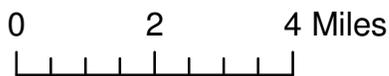


Allegany County Waters with Existing Uses that are Different than the Designated Uses

[Code of Federal Regulations 40 CFR 131.12(a)(1)]
 [Code of MD Regulations (COMAR) 26.08.02.04 A.]



Martin O'Malley, Governor
 Anthony G. Brown, Lt. Governor
 Shari T. Wilson, Secretary
 Robert M. Summers, Deputy Secretary



The streams indicated in red have an existing use that is different than the COMAR designated use. As a result, these streams should be protected for the more stringent use.



Maryland Department of the Environment
 Science Services Administration
 Montgomery Park Business Center
 1800 Washington Boulevard
 Baltimore, Maryland 21230-1718

Date Map Prepared: July 1, 2010



Allegany County

Stream Segments that have Existing Uses different from their Designated Uses

The following tables correspond with and describe the segments shown in red on the existing use map of Allegany County.

Potomac River Lower North Branch Watershed (02141001)				
	Stream Description	Maryland 12-digit Watershed Code	Current Use Classification	Existing Use Classification
1	Headwaters of Mill Run upstream from Route 220 McMullen Highway	021410010055	Use I-P	Use III-P

Wills Creek Watershed (02141003)				
	Stream Description	Maryland 12-digit Watershed Code	Current Use Classification	Existing Use Classification
1	Wills Creek Mainstem from the Pennsylvania line downstream to the confluence with Braddock Run.	021410030101 021410030103	Use I	Use III

Updated July 1, 2010

Regulatory Justification for Enforcing the Protection of Existing Uses

Title 40 Chapter 1 Subchapter D of the Code of Federal Regulations establishes the basis for all federally mandated water protection programs. As such, Title 40 § 131.3 of the regulations specifically defines existing uses as “*those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.*” Federal regulations additionally discuss existing uses in 40 CFR § 131.12(a), part of the Code of Federal Regulations that establishes the basis for EPA and state’s Antidegradation Policy. Here the regulation asserts that “*at a minimum...(1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.*”

Maryland’s Code of Regulations (COMAR) also address the potential for a water body to have additional existing uses that are not formally designated (in state water quality standards). Section 26.08.02.02 A. explicitly states that “(2) *The actual uses of surface water are not limited to those designated in this chapter. Any reasonable and lawful use is permitted provided that the surface water quality is not adversely affected by the use.*” In addition, Maryland’s Anti-degradation Policy (Section 26.08.02.04 A.) echoes the federal regulations by saying “*Waters of this State shall be protected and maintained for*



existing uses and the basic uses of water contact recreation, fishing, protection of aquatic life and wildlife, and agricultural and industrial water supply as identified in Use I.”

Explanation of the Existing Use Determination

The waters identified in red on the map depict those streams that are currently designated as Use I or I-P in state water quality standards (COMAR 26.08.02.08) but which also support self-sustaining trout species. Use I and I-P, as described in COMAR, provides for the protection of non-tidal warm water aquatic life which does not include trout/salmonid species (coldwater species). However, the streams shown in red all have data¹ showing the presence of brook trout (*Salvelinus fontinalis*), a native salmonid species. Since brook trout have reproduced and persisted² in these streams after the date of November 28, 1975, these waters meet the definition of having an existing use of a self-sustaining trout/coldwater/Use III stream. In Maryland, Use III and III-P (nontidal cold water) streams are protected using more stringent temperature and dissolved oxygen water quality criteria. Thus, the streams indicated in the tables above should be protected as Use III and III-P streams to allow for the future existence of a self-sustaining trout population. As a result, these tables serve as a ‘pending’ list of streams for which the designated use (in COMAR) will be revised in the future.

¹ Data obtained for this determination came from programs following strict QAQC procedures. The data sources used for this effort were DNR’s Maryland Biological Stream Survey and Maryland DNR Fisheries information.

² Brook trout are not actively stocked in Maryland waters. For these trout populations to exist today they would have had to reproduce in these waters.