



The High Court decision applies where gold cannot be extracted without base metals as well.

Photo: ROB HOMER

## \$8m refund threat to royalties

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The High Court has ordered the NSW government to refund more than \$8 million in copper royalties to subsidiaries of Newcrest Mining, a decision that threatens to cut state royalties and bolster the profits of mixed-metals miners nationwide.

The court found copper in the Cadia gold-copper mines at Orange, NSW, were privately owned because the state had not reserved ownership of the base metals when the land was granted in the mid-19th century.

As a result, the subsidiaries were entitled to a refund of state royalties paid over a decade.

"For the life of the mine, Newcrest no longer [has] an obligation to pay royalties on the copper," said lawyer Damian Sturzaker, who acted for Newcrest.

Newcrest appealed against a NSW Court of Appeal decision that found the NSW government was entitled to the royalties under 16th century English law.

The appeal turned on events that "occurred more than three centuries ago", High Court Chief Justice Robert French said in his judgment.

But it could have very present ramifications for state governments

and miners paying royalties on base minerals extracted with precious metals from land granted during the gold rush, lawyers said.

The companies argued that copper – unlike gold, a mineral owned by the state attracting a 4 per cent royalty – was privately owned, entitling them to a refund of a large slice of the copper royalties Cadia paid between 1998 and 2008, totalling \$8,030,949.

In an argument that succeeded in

**The companies argued that copper – unlike gold – was privately owned.**

the Court of Appeal, the state government said copper mixed with gold was also a publicly owned mineral. The court found that a "royal prerogative" or exclusive privilege to minerals recognised in a 1568 English court decision was incorporated into Australian law.

The Cadia mines could not be classed as copper mines, which would take the miner outside the reach of the prerogative, because the value of the gold extracted substantially exceeded the value of the copper, the court said.

But the High Court found that laws passed in 1689 curtailed the prerogative. The Cadia mines were copper mines, the court said, and copper was a privately owned mineral. Newcrest was entitled to an \$8 million royalty refund and more than \$2 million in interest.

Marque Lawyers partners Mr Sturzaker and Kim Middleton, who acted for Newcrest, said the decision had implications for all miners.

"The relevance to other miners is where there's a gold or arguably a silver mine that has in the ore ... other base metals, which could be copper, sand [or other metals]," Ms Middleton said.

"If you can't extract the gold separately from those base metals, then you're in our situation."

Mr Sturzaker said miners operating on land granted between 1852 and 1888, where the state government had failed to reserve ownership of base minerals, should examine whether they have paid too much in royalties. "A lot of gold mining went on around Australia in that period," he said. "We're not talking about a very, very small class of potential application."

The High Court ordered the NSW government to pay the miner's costs.