

COURTS

Newcrest wins dispute over copper royalties

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"SINCE gold is an excellent material, it must belong to the most excellent person in the realm, the king." That was apparently the sentiment of an English court judgment more than 400 years ago. Such a sentiment, it seems, does not hold sway over copper.

The High Court of Australia ruled yesterday that the NSW government cannot charge the mining company Newcrest the same royalty for the two metals it mines near Orange because, although they come from the same mines, the copper is privately owned.

Under a decision that has its genesis in a 1568 judgment from the English court, the government must repay Newcrest and its subsidiary Cadia Holdings almost \$11 million in royalties and interest plus legal costs.

The case centres on mines under six titles near Orange, from which Newcrest draws copper and gold. The two metals are intermingled at these mines, meaning one cannot be extracted without the other.

The government had categorised the mines as gold mines, and charged royalties on the basis that because they were gold mines the minerals produced belonged to the Crown, as the law established in 1568.



King hit ... the Cadia Hill gold and copper mine at Orange has been locked in a row over royalties. Photo: Rob Homer

Cadia paid the royalties from 1998 to 2008, but argued that the copper did not belong to the Crown and was privately owned.

In 2008 the NSW Supreme Court ruled in favour of Newcrest, finding that under a 1688 act of the English Parliament the Cadia mines should be classed as both copper and gold mines, and that the copper was owned by the land-holder.

The government had the decision overturned in the Court of Appeal.

In the hearings, lawyers for Cadia highlighted some of the reasons behind the original judgment that established all gold in the land

belonged to the king. Aside from being the most excellent person, the king also needed an army "and an army cannot be maintained without treasure".

There was also the necessity for coinage in trade and commerce.

Yesterday's judgment by the Chief Justice, Robert French, said another reason for the original decision was to prevent any of the king's subjects becoming "too formidable".

A spokeswoman for Newcrest said it had made provisions for the payment of the royalties and those would no longer be needed. "We're very pleased to have the matter resolved."

The decision is not expected to have wide-reaching implications, though it could affect some mines if they comprise base metals intermingled with gold and if the land was granted between 1852 and 1881, without any express reservation of minerals in the title.

A spokeswoman for the NSW Minister for Mineral and Forest Resources, Paul McLeay, said the companies had been holding the amounts in dispute since the initial Supreme Court decision. "Accordingly, the government will not need to pay these amounts to the appellants which they still hold."