

# Introduction

The United States is behind the rest of the world with respect to regulating Bioprospecting. However, one state, Utah, has taken the lead in passing a balanced, sustainable, approach to restricting bioprospecting that takes into account both economic and environmental concerns. The Federal government should follow Utah's lead:

Thus, I stand resolved: The United States Federal Government should significantly increase restrictions on bioprospecting

# Contention 1: Inherency

US failed to engage in policy to balance bioprospecting benefits

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(William M. Fisher, J.D. Candidate at University of Colorado Law School. "THE UTAH BIOPROSPECTING ACT OF 2010: (UNINTENTIONAL) STATE-LEVEL IMPLEMENTATION OF THE UNITED NATIONS CONVENTION ON BIODIVERSITY". Journal of Telecommunications and High Technology Law, May 11, 2012, [http://jthtl.org/content/articles/V10I1/JTHTLv10i1\\_W%20Fischer.PDF](http://jthtl.org/content/articles/V10I1/JTHTLv10i1_W%20Fischer.PDF))

Humans have always engaged in bioprospecting, but, as global populations rise exponentially, managing these resources responsibly and sustainably has become increasingly difficult.<sup>182</sup> There will always be competing interests, with the need to incentivize research activities that yield important commercial products balanced with the need to preserve and protect other aspects of the environment. While other nations have addressed such concerns to their respective benefit, the U.S. still grapples with these debates, and has largely avoided intelligent and engaged analysis of these important concerns within its own borders. Yellowstone has become a policy laboratory in this regard, and its managers now realize that such resources "hold benefits for humanity beyond recreation [and] aesthetics, and . . . should be shared [with] the private sector to explore and develop [], while maintaining the parks' integrity, [to] assure[] the greatest good for the greatest number." In this regard, Utah's Bioprospecting Act of 2010 follows in the footsteps of the Yellowstone Diversa CRADA and the subsequent federal lawmaking, but the state has a unique opportunity to formulate its regulations in a way that is more narrowly tailored to its particular needs.

## Contention 2: Harms

### Bioprospecting rarely shares benefits

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Prior to Convention on Biological Diversity, developing nations' genetic resources were collected "without compensating the communities and governments of the source countries where the products were found." Many important pharmaceuticals, for example, developed from raw material collected in this way have yielded multi-million dollar drug products with little, if any, compensation or recognition of the source countries in the developing world. Many nations have responded to such concerns with their own uniquely-tailored laws, and their experiences have been complicated as the international legal landscape has evolved over time.

## Contention 3: Plan

Therefore I offer the following plan: The United States Federal Government will significantly increase restrictions on Bioprospecting by adopting The Utah BioProspecting Act nationwide. The Utah law includes the following four restrictions:

1. Law will require registration prior to state land bioprospecting activities.
2. Require those parties to enter into a contract with the Federal Government to identify information of specific sites.
3. Registrant agrees to “negotiate in good faith” and Federal Government reserves the rights to economic benefits derived from the registrant’s current and future activities related to discoveries made on the subject lands listed in the contract.
4. As with Utah all licenses are good for up to twelve months and are renewable at the Federal Government’s discretion.

Enforcement will be through the Department of Interior. Funding through normal means, timeline is immediate.

## Contention 4: Solvency

### Benefit-Sharing agreements avoid disputes

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Commentators argue that bioprospecting benefits-sharing arrangements between researchers and governments should seek to harmonize the often competing provisions of national-level law, Trade-Related aspects of Intellectual Property Rights, and the Convention on Biological Diversity. The relation of this view to Utah's approach on the subject is readily apparent. Through such contractual, and informed consent-based approaches, all interests that have contributed to a successfully launched bioprospecting product may be recognized, either through direct payment, or through other intangible forms of reward. By understanding the interplay amongst competing laws and policies in an increasingly intertwined global economy, disputes such as the Indian-US turmeric patent case may be avoided. Such an approach will help ensure the survival and influence of the new Utah Act.