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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 ARTHUR WEST,

11 Plaintiff,

CASE NO. C08-5741RJB

12 v.

13 STEPHEN L. JOHNSON, U.S. EPA
14 ADMINISTRATOR, U.S. SECRETARY OF
15 COMMERCE, WASHINGTON STATE
16 DEPARTMENT OF ECOLOGY, STATE OF
17 WASHINGTON, PORT OF OLYMPIA,
CITY OF OLYMPIA, WEYERHAEUSER,
LOTT, FEDERAL RAILROAD
ADMINISTRATION,

18 Defendants.

ORDER DENYING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION

19 This matter comes before the Court on Plaintiff's Motion for Preliminary Injunction.
20 Dkt. 60. The Court has considered the pleadings filed in support of and in opposition to the
21 motion and the file herein.

22 **I. FACTUAL AND PROCEDURAL BACKGROUND**

23 **A. FACTS**

24 On December 12, 2008, Plaintiff, *pro se*, filed this suit asserting claims under several
25 federal and state statutes. Dkt. 1. Plaintiff broadly asserts that some or all the Defendants have
26 violated the Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*, the Coastal Zone Management
27 Act ("CZMA"), 16 U.S.C. § 1451 *et seq.*, and the National Environmental Policy Act ("NEPA"),
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1 42 U.S.C. § 4321 *et seq.* *Id.* Plaintiff also alleges that the City of Olympia, the Port of Olympia,
2 and the now dismissed Washington State Department of Transportation have withheld public
3 records regarding the Intermodal Infrastructure Enhancement Project and East Bay
4 Redevelopment area, citing Washington’s Public Records Act, RCW 42.56 *et seq.* *Id.*

5 All Plaintiff’s claims against the Washington State Department of Transportation and the
6 Washington Environmental Hearings Office were dismissed on June 2, 2009. Dkt. 51.

7 On June 18, 2009, this Court granted the various Defendants’ Motion to Stay Discovery
8 Pending Ruling on the Motions to Dismiss. Dkt. 70. A short stay of discovery is appropriate
9 until a decision can be made on the various Defendants’ motions to dismiss, brought pursuant to
10 Fed. R. Civ. P. 12 (b). *Id.* Discovery was stayed until July 24, 2009. *Id.*

11 The Federal Defendants’ Motions to Dismiss (Dkt. 68), Defendants Washington State
12 Department of Ecology and State of Washington’s Motion to Dismiss (Dkt. 69), Defendant City
13 of Olympia’s Motion to Dismiss for Lack of Subject Matter Jurisdiction (Dkt. 54), joined by
14 Defendant Lott (Dkt. 56) are now noted for consideration on July 24, 2009. Dkt. 91. The
15 Defendant Port of Olympia’s Motion to Dismiss is noted for July 27, 2009. Dkt. 78.

16 **B. PENDING MOTION**

17 On June 9, 2009, Plaintiff filed a Motion for Preliminary Injunction which would impose
18 “a six month moratorium upon the State of Washington to prevent the issue [sic] of further
19 NPDES permits to the Port of Olympia until the Port has demonstrated at least a six month
20 period of full compliance with the Clean Water Act in regard to its existing permits, or at the
21 very least, compliance with its own agreement with OPA[sic].” Dkt. 60, at 8.

22 In Plaintiff’s motion he alleges that “[w]hile this case has been pending, there have been
23 multiple continuing violations by the Port involving the East Bay Redevelopment, the
24 Intermodal Infrastructure Enhancement Project and the Cargo yard.” Dkt. 68, at 2. Plaintiff
25 asserts that one of these violations also “violated state water quality standards by discharging
26 oil.” *Id.* Plaintiff alleges that these violations are evidenced by “repeated minimal fines by the
27 State of Washington.” *Id.* Plaintiff further asserts that the Defendants are willfully attempting to
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1 “deny disclosure of on going violations to Plaintiff.” *Id.* Plaintiff points to Defendants’ motion
2 to stay discovery until their various motions to dismiss can be decided as evidence of their
3 attempt to “deny disclosure of ongoing violations.” *Id.* As a result of Defendants’ actions,
4 Plaintiff argues that the Court should apply traditional principles of equity to lessen the required
5 balancing standard. *Id.*, at 3.

6 Washington State Department of Ecology (“Ecology”) is the entity that issues the
7 NPDES permits in Washington. RCW 90.48.260. Ecology files a Response arguing that
8 Plaintiff has not met the standard required for issuance of a preliminary injunction. Dkt. 76.
9 Ecology also argues that Plaintiff’s claims against it are barred by the Eleventh Amendment as
10 stated in its Motion to Dismiss. *Id.* The issues raised in the State’s Motion to Dismiss are not
11 yet ripe, and will not be discussed here.

12 The Port of Olympia also responds, and argues that Plaintiff does not meet the
13 requirements for a preliminary injunction. Dkt. 77.

14 **II. DISCUSSION**

15 **A. MOTION FOR PRELIMINARY INJUNCTION STANDARD**

16 The U.S. Supreme Court recently held that, “[a] preliminary injunction is an
17 extraordinary remedy never awarded as of right. In each case, courts must balance the
18 competing claims of injury and must consider the effect on each party of the granting or
19 withholding of the requested relief.” *Winter v. Natural Resources Defense Council, Inc.*, ___
20 U.S. ___, 129 S.Ct. 365, 375 (2008). “A plaintiff seeking a preliminary injunction must
21 establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in
22 the absence of preliminary relief, that the balance of equities tips in his favor, and that an
23 injunction is in the public interest.” *Id.*, at 375.

24 The standard announced in *Winter* should be applied here. Plaintiff makes no showing
25 that a different standard should be applied, nor does he address the standard set forth in *Winter*.

26 **B. LIKELY TO SUCCEED ON THE MERITS ?**

27 Plaintiff argues that he is likely to succeed on the merits because “Defendants are chronic
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1 violators of the Clean Water Act.” Dkt. 60, at 6. Plaintiff argues that Defendants admitted to
2 ongoing permit violations. *Id.*

3 Plaintiff has failed to show that he is likely to succeed on the merits. Plaintiff fails to
4 provide any evidence from which the Court could make a finding that he is likely to succeed on
5 one or more of his claims. Plaintiff’s Motion for Preliminary Injunction was noted for
6 consideration on July 6, 2009. Dkt. 60. On July 13, 2009, Plaintiff filed a pleading entitled
7 “Appellant’s Declaration Re: Ongoing (July 12) violations of the Clean Water Act and
8 Discharge Through City Drains.” Dkt. 88. Plaintiff does not specifically identify this pleading as
9 having to do with his Motion for Preliminary Injunction, or whether this pleading is intended to
10 address one of the several other motions that have been filed. Assuming that this pleading is
11 intended to relate to this Motion for Preliminary Injunction, Plaintiff still fails to make the
12 requisite showing. There are several photographs attached to this July 13, 2009, pleading, and
13 Plaintiff asserts “[u]nder the ancient doctrine of Res Ipsa Loquitur, these photographs speak for
14 themselves, conclusively as to both ongoing Clean Water Act violations and the gross negligence
15 or criminal culpability of those responsible.” Dkt. 88, at 1. The pictures that Plaintiff attaches
16 are not sufficient to show he is likely to succeed on the merits of his claims. The attached letter
17 (Dkt. 84, at 2-3) purportedly from Ecology to the Port of Olympia, notifying the Port of an
18 assessed fine for an “Unlawful Discharge of Polluting Matter into the Waters of the State,” is
19 insufficient to show that Plaintiff is likely to succeed on the merits of his claim. This letter,
20 dated November 2008, also undercuts Plaintiff’s insistence that immediate action is required.

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22 **C. LIKELY TO SUFFER IRREPARABLE HARM ?**

23 The “frequently reiterated standard requires plaintiffs seeking preliminary relief to
24 demonstrate that irreparable injury is likely in the absence of an injunction.” *Winter*, at 375.

25 Plaintiff argues that he is irreparably harmed because Defendants’ discharges “are
26 adversely impacting Plaintiff’s recreational use of lower Budd inlet.” Dkt. 60, at 6. Plaintiff
27 argues that Defendants’ “discharges of unknown quantities of oil and other toxic material . . .
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1 create health risks.” *Id.* Plaintiff states that as a fish consumer, he is “endangered and adversely
2 affected” by the “Port’s continuing illegal discharges.” *Id.*

3 Plaintiff makes no showing that the failure to issue the relief sought here - a bar on
4 further permits being issued to the Port - would likely result in “irreparable injury.” Plaintiff
5 argues that he is being injured under the current permitting system, but makes no showing that
6 he would be further injured if additional permits were issued. Moreover, Plaintiff does not
7 provide any evidence to support his assertions. “Speculative injury does not constitute
8 irreparable injury sufficient to warrant granting a preliminary injunction. A plaintiff must do
9 more than merely allege imminent harm sufficient to establish standing; a plaintiff must
10 demonstrate immediate threatened injury as a prerequisite to preliminary injunctive relief.”
11 *Caribbean Marine Services, Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988)(*internal citations*
12 *omitted*).

13 **D. BALANCE OF EQUITIES TIPS IN HIS FAVOR AND INJUNCTION IS IN**
14 **PUBLIC’S INTEREST ?**

15 Plaintiff has made no showing that the balance of equities tips in his favor. Plaintiff has
16 made no showing that issuing the proposed injunction is in the public’s interest.

17 **E. CONCLUSION**

18 Plaintiff’s Motion for a Preliminary Injunction (Dkt. 60) should be denied. Plaintiff has
19 failed to carry his burden.

20 **III. ORDER**

21 Therefore, it is hereby, **ORDERED** that:

- 22 • Plaintiff’s Motion for Preliminary Injunction (Dkt. 60) **IS DENIED**.

23 The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel
24 of record and to any party appearing *pro se* at said party’s last known address.

25 DATED this 16th day of July, 2009.

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27 Robert J. Bryan
28 United States District Judge

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